United Nations

Report of the Committee against Torture

Twenty-first session (9-20 November 1998) Twenty-second session (26 April-14 May 1999)

General Assembly
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Fifty-fourth session
Supplement No. 44 (A/54/44)

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Chapter I
Organizational and other matters

A. States parties to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

1. As at 14 May 1999, the closing date of the twenty-second session of the Committee against Torture, there were 114 States parties to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, nine more than the number of States parties at the time of the adoption of the previous annual report on 22 May 1998. The Convention was adopted by the General Assembly in resolution 39/46 of 10 December 1984 and opened for signature and ratification in New York on 4 February 1985. It entered into force on 26 June 1987 in accordance with the provisions of its article 27. The list of States which have signed, ratified or acceded to the Convention is contained in annex I to the present report. The States parties that have declared that they do not recognize the competence of the Committee provided for by article 20 of the Convention are listed in annex II. The States parties that have made declarations provided for in articles 21 and 22 of the Convention are listed in annex III.

2. The text of the declarations, reservations or objections made by States parties with respect to the Convention, are reproduced in document CAT/C/2/Rev.5. Updated information in that regard may be found at the United Nations Human Rights Web site (www.un.org/Depts...rt_bco/iv_boo/iv_9.html).

B. Opening and duration of the sessions of the Committee against Torture

3. The Committee against Torture has held two sessions since the adoption of its last annual report. The twenty-first and twenty-second sessions of the Committee were held at the United Nations Office at Geneva from 9 to 20 November 1998 and from 26 April to 14 May 1999.

4. At its twenty-first session the Committee held 19 meetings (345th to 363rd meeting) and at its twenty-second session the Committee held 27 meetings (364th to 390th meeting). An account of the deliberations of the Committee at its twenty-first and twenty-second sessions is contained in the relevant summary records (CAT/C/SR.345-390).

C. Membership and attendance

5. In accordance with article 17, paragraph 6, of the Convention and rule 13 of the Committee's rules of procedure, Mr. Bostjan Zupančič, by a letter dated 12 November 1998, informed the Secretary-General of his decision to cease his functions as a member of the Committee. By a note dated 4 February 1999, the Government of Slovenia informed the Secretary-General of its decision to appoint, subject to the approval of the States parties, Ms. Ada Polajnar-Pavčnik to serve for the remainder of Mr. Zupančič's term on the Committee, which will expire on 31 December 1999.

6. Since none of the States parties to the Convention responded negatively within the six-week period after having been informed by the Secretary-General of the proposed appointment, the Secretary-General considered that they had approved the appointment of Ms. Polajnar-Pavčnik as a member of the Committee, in accordance with the above-mentioned provisions. The list of the members of the Committee in 1999, together with an indication of the duration of their term of office, appears in annex IV to the present report.

7. All the members attended the twenty-first session of the Committee. The twenty-second session of the Committee was attended by all the members, except Ms. Polajnar-Pavčnik who attended two of the three weeks of the session.

D. Solemn declaration by a member of the Committee

8. At the 374th meeting, on 3 May 1999, the newly appointed member, Ms. Polajnar-Pavčnik, made the solemn declaration upon assuming her duties, in accordance with rule 14 of the rules of procedure.

E. Officers

9. The following members of the Committee acted as officers during the reporting period:

Chairman:

Mr. Peter **Burns**

Vice-Chairmen:

Mr. Guibril **Camara**
Mr. Alejandro **González Poblete**
Mr. Bostjan **Zupančič** (until 20 November 1998)
Mr. **Yu** Mengjia (from 26 April 1999)

Rapporteur:
Mr. Bent **Sørensen**

F. Agendas

10. At its 345th meeting, on 9 November 1999, the Committee adopted the following items listed in the provisional agenda submitted by the Secretary-General in accordance with rule 6 of the rules of procedure (CAT/C/46), as the agenda of its twenty-first session:

1. Adoption of the agenda.
2. Organizational and other matters.
3. Submission of reports by States parties under article 19 of the Convention.
4. Consideration of reports submitted by States parties under article 19 of the Convention.
5. Consideration of information received under article 20 of the Convention.
6. Consideration of communications under article 22 of the Convention.

11. At its 364th meeting, on 26 April 1999, the Committee adopted the following items listed in the provisional agenda submitted by the Secretary-General in accordance with rule 6 of the rules of procedure (CAT/C/50) as the agenda of its twenty-second session:

1. Adoption of the agenda.
2. Solemn declaration by a member of the Committee appointed under article 17, paragraph 6, of the Convention.
3. Organizational and other matters.
4. Submission of reports by States parties under article 19 of the Convention.
5. Consideration of reports submitted by States parties under article 19 of the Convention.
6. Consideration of information received under article 20 of the Convention.
7. Consideration of communications under article 22 of the Convention.
8. Future meetings of the Committee.
9. Action by the General Assembly at its fifty-third session:
   (a) Annual report submitted by the Committee under article 24 of the Convention;
   (b) Effective implementation of international instruments on human rights, including reporting obligations under international instruments on human rights.
10. Annual report of the Committee on its activities.

G. Question of a draft optional protocol to the Convention

12. At the 348th meeting, on 11 November 1998, Mr. Sørensen, who had been designated by the Committee as its observer in the inter-sessional open-ended working group of the Commission on Human Rights elaborating the protocol, informed the Committee on the progress made by the working group at its seventh session held at the United Nations Office at Geneva from 28 September to 9 October 1998.

H. Participation of Committee members in other meetings

13. At the 364th meeting, on 26 April 1999, Mr. Sørensen informed the Committee about the outcome of the Second International Meeting on the Development of a Manual for the Effective Documentation of Torture, at which he had participated. The meeting was organized by non-governmental organization and medical experts and was held at Istanbul from 11 to 13 March 1999. At the same Committee meeting, Mr. Burns and Mr. Mavrommatis reported on their participation in two workshops on issues relating to refugees. The workshop in which Mr. Burns had participated had been organized by the Greek Government and the United Nations High Commissioner for Refugees at Athens, in December 1998. The workshop in which Mr. Mavrommatis had participated had been organized jointly by the Ministry for Foreign Affairs of Sweden and non-governmental organizations in Stockholm, also in December 1998. The workshop focused, in particular, on the training of immigration officers with regard to the investigation on and evaluation of applications for asylum involving allegations of torture.

Chapter II
Action by the General Assembly at its fifty-third session

14. The Committee considered this agenda item at its 370th and 386th meetings, held on 29 April and 11 May 1999.

A. Annual report submitted by the Committee against Torture under article 24 of the Convention

15. The Committee took note of General Assembly resolution 53/139 of 9 December 1998. The Committee welcomed, in particular, the fact that the General Assembly had authorized the Secretary-General to extend the spring sessions of the Committee by one additional week.

B. Effective implementation of international instruments on human rights, including reporting obligations under international instruments on human rights

Twenty-first session

16. The Committee took note of the report of the 10th meeting of persons chairing the human rights treaty bodies (A/53/432, annex), which was held at the United Nations Office at Geneva from 14 to 18 September 1998. The Chairman of the Committee who had chaired that meeting provided information on the main issues discussed and recommendations made by the Chairpersons.

Twenty-second session

17. The Committee took note of General Assembly resolution 53/138 of 9 December 1999. In addition, the Committee resumed its discussion on issues and recommendations which were included in the report of the 10th meeting of persons chairing treaty bodies. The Committee, *inter alia,* was of the view that it was not necessary for it to hold sessions at United Nations Headquarters. It also hoped that the extension of its spring sessions by one additional week would help in reducing its backlog concerning State party reports to be considered under article 19 of the Convention and individual communications to be examined under article 22 of the Convention.

18. In connection with the question of its increasing workload, the Committee considered a draft proposal for a plan of action to strengthen the implementation of the Convention as well as other international human rights instruments, namely: the International Covenant on Civil and Political Rights and the International Convention on the Elimination of All Forms of Racial Discrimination. The draft proposal had been prepared by the Office of the United Nations High Commissioner on Human Rights at the request of the persons chairing the human rights treaty bodies at their 10th meeting.

19. The Committee generally agreed on the usefulness of a plan of action and provided suggestions to improve the text of the draft proposal. It stressed that the part of the Plan of Action concerning the implementation of the Convention should include a section on resources to be made available to provide medical expertise to the Committee.

20. The Committee will further discuss the draft plan of action at its future sessions.

Chapter III
Submission of reports by States parties under article 19 of the Convention

Action taken by the Committee to ensure the submission of reports

21. The Committee, at its 345th, 362nd and 364th meetings, held on 9 and 20 November 1998, and 26 April 1999, considered the status of submission of reports under article 19 of the Convention. The Committee had before it the following documents:

(a) Notes by the Secretary-General concerning initial reports of States parties that were due from 1988 to 1999 (CAT/C/5, 7, 9, 12, 16/Rev.1, 21/Rev.1, 24, 28/Rev.1, 32/Rev.2, 37, 42 and 47);

(b) Notes by the Secretary-General concerning second periodic reports that were due from 1992 to 1999 (CAT/C/7, 20/Rev.1, 25, 29, 33, 38, 43 and 48);

(c) Notes by the Secretary-General concerning third periodic reports that were due from 1996 to 1999 (CAT/C/34, 39, 44 and 49).

22. The Committee was informed that, in addition to the 16 reports that were scheduled for consideration by the Committee at its twenty-first and twenty-second sessions (see chap. IV, paras. 29 and 30), the Secretary-General had

received the initial reports of Azerbaijan (CAT/C/37/Add.3), Kyrgyzstan (CAT/C/42/Add.1) and Uzbekistan (CAT/C/32/Add.3), the second periodic reports of Austria (CAT/C/17/Add.21) and Malta (CAT/C/29/Add.6) and the third periodic reports of China (CAT/C/39/Add.2), Finland (CAT/C/44/Add.6), the Netherlands (Antilles and Aruba) (CAT/C/44/Add.4), Peru (CAT/C/39/Add.1), Poland (CAT/C/44/Add.5) and Portugal (CAT/C/44/Add.7).

23. The Committee was also informed that the revised version of the initial report of Belize, requested for 10 March 1994 by the Committee at its eleventh session, had not yet been received in spite of seven reminders sent by the Secretary-General and a letter that the Chairman of the Committee addressed to the Minister for Foreign Affairs and Economic Development of Belize on 20 November 1995.

24. In addition, at its twenty-first and twenty-second sessions the Committee was informed about the reminders that had been sent by the Secretary-General to States parties whose reports were overdue. The situation with regard to overdue reports as at 14 May 1999, was as follows:

State party	*Date on which the report was due*	*Number of reminders*
Initial reports		
Uganda	25 June 1988	17
Togo	17 December 1988	17
Guyana	17 June 1989	14
Brazil	27 October 1990	12
Guinea	8 November 1990	13
Somalia	22 February 1991	10
Estonia	19 November 1992	9
Yemen	4 December 1992	9
Bosnia and Herzegovina	5 March 1993	8
Benin	10 April 1993	8
Latvia	13 May 1993	8
Seychelles	3 June 1993	8
Cape Verde	3 July 1993	7
Cambodia	13 November 1993	7
Burundi	19 March 1994	6
Slovakia	27 May 1994	6
Slovenia	14 August 1994	6
Antigua and Barbuda	17 August 1994	6
Costa Rica	10 December 1994	6
Ethiopia	12 April 1995	5
Albania	9 June 1995	5
United States of America	19 November 1995	4
Chad	9 July 1996	2
Republic of Moldova	27 December 1996	2
Côte d'Ivoire	16 January 1997	2
Lithuania	1 March 1997	2
Democratic Republic of the Congo	16 April 1997	2
Malawi	10 July 1997	1
El Salvador	16 July 1997	1
Honduras	3 January 1998	1
Kenya	22 March 1998	-
Saudi Arabia	21 October 1998	-
Second periodic reports		
Afghanistan	25 June 1992	10
Belize	25 June 1992	10
Cameroon	25 June 1992	10
Philippines	25 June 1992	10
Uganda	25 June 1992	9
Togo	17 December 1992	9
Guyana	17 June 1993	8
Turkey	31 August 1993	8
Australia	6 September 1994	6
Brazil	27 October 1994	6
Guinea	8 November 1994	6
Somalia	22 February 1995	4
Romania	16 January 1996	3
Nepal	12 June 1996	3
Venezuela	27 August 1996	3
Yugoslavia	9 October 1996	2
Estonia	19 November 1996	2
Yemen	4 December 1996	2
Jordan	12 December 1996	2
Monaco	4 January 1997	2
Bosnia and Herzegovina	5 March 1997	1
Benin	10 April 1997	1
Latvia	13 May 1997	1
Seychelles	3 June 1997	1
Cape Verde	3 July 1997	1
Cambodia	13 November 1997	1
Czech Republic	31 December 1997	1
Burundi	19 March 1998	-
Slovakia	27 May 1998	-
Slovenia	14 August 1998	-
Antigua and Barbuda	17 August 1998	-

Armenia	12 October 1998	-
Costa Rica	10 December 1998	-
Third periodic reports		
Afghanistan	25 June 1996	3
Belarus	25 June 1996	3
Belize	25 June 1996	3
Bulgaria	25 June 1996	3
Cameroon	25 June 1996	3
France	25 June 1996	3
Philippines	25 June 1996	3
Russian Federation	25 June 1996	3
Senegal	25 June 1996	3
Uganda	25 June 1996	3
Uruguay	25 June 1996	3
Canada	23 July 1996	3
Austria	27 August 1996	1
Luxembourg	28 October 1996	1
Togo	17 December 1996	1
Colombia	6 January 1997	1
Ecuador	28 April 1997	2
Guyana	17 June 1997	1
Turkey	31 August 1997	1
Tunisia	22 October 1997	-
Chile	29 October 1997	1
Greece	4 November 1997	1
Netherlands (Metropolitan territory)	19 January 1998	-
Libyan Arab Jamahiriya	14 June 1998	-
Australia	6 September 1998	-
Algeria	11 October 1998	-
Brazil	27 October 1998	-
Guinea	8 November 1998	-
New Zealand	8 January 1999	-
Guatemala	3 February 1999	-
Somalia	22 February 1999	-

25. The Committee expressed concern at the number of States parties that did not comply with their reporting obligations. With regard, in particular, to States parties whose reports were more than four years overdue, the Committee deplored that, in spite of several reminders sent by the Secretary-General and letters or other messages of its Chairman to their respective Ministers for Foreign Affairs, those States parties continued not to comply with the obligations they had freely assumed under the Convention. The Committee stressed that it had the duty to monitor the Convention and that the non-compliance of a State party with its reporting obligations constituted an infringement of the provisions of the Convention.

26. In this connection, the Committee decided to continue its practice of making available lists of States parties whose reports are overdue during the press conferences that the Committee usually holds at the end of each session.

27. The Committee again requested the Secretary-General to continue sending reminders automatically to those States whose initial reports were more than 12 months overdue and subsequent reminders every six months.

28. The status of submission of reports by States parties under article 19 of the Convention as at 14 May 1999, the closing date of the twenty-second session of the Committee, appears in annex V to the present report.

Chapter IV
Consideration of reports submitted by States parties under article 19 of the Convention

29. At its twenty-first and twenty-second sessions, the Committee considered reports submitted by 16 States parties, under article 19, paragraph 1, of the Convention. The following reports, listed in the order in which they had been received by the Secretary-General, were before the Committee at its twenty-first session:

Yugoslavia: initial report	CAT/C/16/Add.7
Iceland: initial report	CAT/C/37/Add.2
Croatia: second periodic report	CAT/C/33/Add.4
United Kingdom of Great Britain and Northern Ireland: third periodic report	CAT/C/44/Add.1
Hungary: third periodic report	CAT/C/34/Add.10
Tunisia: second periodic report	CAT/C/20/Add.7

30. The following reports, listed in the order in which they had been received by the Secretary-General, were before the Committee at its twenty-second session:

The former Yugoslav Republic of Macedonia: initial report	CAT/C/28/Add.4
Mauritius: second periodic report	CAT/C/43/Add.1
Venezuela: initial report	CAT/C/16/Add.8
Bulgaria: second periodic report	CAT/C/17/Add.19
Italy: third periodic report	CAT/C/44/Add.2

Luxembourg: second period report	CAT/C/17/Add.20
Libyan Arab Jamahiriya: third period report	CAT/C/44/Add.3
Morocco: second periodic report	CAT/C/43/Add.2
Egypt: third periodic report	CAT/C/34/Add.11
Liechtenstein: second periodic report	CAT/C/29/Add.5

31. In accordance with rule 66 of the rules of procedure of the Committee, representatives of all the reporting States were invited to attend the meetings of the Committee when their reports were examined. All of the States parties whose reports were considered by the Committee sent representatives to participate in the examination of their respective reports.

32. In accordance with the decision taken by the Committee at its fourth session,[1] country rapporteurs and alternate rapporteurs were designated by the Chairman, in consultation with the members of the Committee and the Secretariat, for each of the reports submitted by States parties and considered by the Committee at its twenty-first and twenty-second sessions. The list of the above-mentioned reports and the names of the country rapporteurs and their alternates for each of them appear in annex VI to the present report.

33. In connection with its consideration of reports, the Committee also had before it the following documents:

(a) Status of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and reservations and declarations under the Convention (CAT/C/2/Rev.5);

(b) General guidelines regarding the form and contents of initial reports to be submitted by States parties under article 19 of the Convention (CAT/C/4/Rev.2);

(c) General guidelines regarding the form and contents of initial reports to be submitted by States parties under article 19 of the Convention (CAT/C/14/Rev.1).

34. In accordance with the decision taken by the Committee at its eleventh session,[2] the following sections, arranged on a country-by-country basis according to the sequence followed by the Committee in its consideration of the reports, contain references to the reports submitted by the States parties and to the summary records of the meetings of the Committee at which the reports were considered, as well as the text of conclusions and recommendations adopted by the Committee with respect to the reports of States parties considered at its twenty-first and twenty-second sessions.

A. Yugoslavia

35. The Committee considered the initial report of Yugoslavia (CAT/C/16/Add.2) at its 348th, 349th and 354th meetings, held on 11 and 16 November 1998 (CAT/C/SR.348, 349 and 354) and has adopted the following conclusions and recommendations:

1. Introduction

36. Yugoslavia signed the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on 18 April 1989 and ratified it on 20 June 1991. It recognized the competence of the Committee against Torture to receive and consider communications under articles 21 and 22 of the Convention.

37. The initial report of Yugoslavia was due in 1992. The Committee expresses concern over the fact that the report was submitted on 20 January 1998 only. The report contains background information, information on international instruments, on competent authorities, on court and police procedures and information concerning the compliance with articles 2 to 16 of the Convention.

2. Positive aspects

38. As a positive aspect, it can be mentioned that the provisions of article 25 of the Constitution of the Federal Republic of Yugoslavia forbid all violence against a person deprived of liberty, any extortion of a confession or statement. This article proclaims that no one may be subjected to torture, degrading treatment or punishment. The same norm is contained in the Constitutions of the constituent republics of Serbia and Montenegro.

39. The Criminal Code of Yugoslavia defines the punishable offences of unlawful deprivation of freedom, extortion of depositions and maltreatment in the discharge of office. Similar provisions are contained in the criminal codes of Serbia and of Montenegro. The Law on Criminal Procedure applicable throughout the Federal Republic of Yugoslavia contains a provision according to which any extortion of a confession or statement from an accused person or any other person involved in the proceedings is forbidden and punishable. This code also provides that during detention neither the personality nor the dignity of an accused may be offended.

40. The police regulations in Yugoslavia provide disciplinary and other measures, including termination of employment and criminal charges in cases of acts by police officers violating the provisions of the Convention.

41. The current legislative reform in the area of criminal law, and especially criminal procedure, envisions specific provisions, which will, hopefully, contribute to the improved prevention of torture in Yugoslavia.

3. Factors and difficulties impeding the application of the provisions of the Convention

42. The Committee took into account the situation in which Yugoslavia currently finds itself, especially with respect to the unrest and ethnic friction in the province of Kosovo. However, the Committee emphasizes that no exceptional circumstances can ever provide a justification for failure to comply with the terms of the Convention.

4. Subjects of concern

43. The Committee's concerns relate mainly to legislation not complying with the Convention and, more gravely, the situation regarding the implementation in practice of the Convention.

44. With respect to legislation, the Committee is concerned over the absence in the criminal law of Yugoslavia of a provision defining torture as a specific crime in accordance with article 1 of the Convention. The incorporation of the definition contained in article 1 of the Convention, in compliance with article 4, paragraph 1 and article 2, paragraph 1, requires specific as well as systematic legislative treatment in the area of substantive criminal law. Article 4 of the Convention demands that each State party shall ensure that all acts of torture are offences under its own criminal law. A verbatim incorporation of this definition into the Yugoslav Criminal Code would permit the current Yugoslav criminal code formula defining the "extortion of confession" to be made more precise, clear and effective.

45. One of the essential means in preventing torture is the existence, in procedural legislation, of detailed provisions on the inadmissibility of unlawfully obtained confessions and other tainted evidence. In this respect the report of the State party (para. 70) only mentions the "general principles" of national criminal legislation. However, the absence of detailed procedural norms pertaining to the exclusion of tainted evidence can diminish the practical applicability of these general principles as well as of other relevant norms of the Law on Criminal Procedure. Evidence obtained in violation of article 1 of the Convention should never be permitted to reach the cognizance of the judges deciding the case, in any legal procedure.

46. Regulating pre-trial detention is of specific significance for the prevention of torture. Two issues are crucial in this respect, namely incommunicado detention and access to counsel. Article 23 of the Constitution of Yugoslavia requires that the detained person should have prompt access to counsel. This would imply that such access to counsel must be made possible immediately after the arrest. However, article 196 of the Law on Criminal Procedure permits the police to keep a person, in specific instances, in detention for a 72 hour period, without access either to counsel or an investigating judge. The report does not mention the duration of the post-indictment pre-trial detention, which should not be unduly extended.

47. With respect to the factual situation in Yugoslavia, the Committee is extremely concerned over the numerous accounts of the use of torture by the State police forces it has received from non-governmental organizations. Reliable data received by the Committee from non-governmental organizations include information describing numerous instances of brutality and torture by the police, particularly in the districts of Kosovo and Sandjack. The acts of torture perpetrated by the police, and especially by its special units, include beatings by fists and wooden or metallic clubs, mainly on the head, the kidney area and on the soles of the feet, resulting in mutilations and even death in some cases. There were instances of use of electro-shock. The concern of the Committee derives also from reliable information that confessions obtained by torture were admitted as evidence by the courts even in cases where the use of torture had been confirmed by pre-trial medical examinations.

48. The Committee is also gravely concerned over the lack of sufficient investigation, prosecution and punishment by the competent authorities (article 12 of the Convention) of suspected torturers or those breaching article 16 of the Convention, as well as with the insufficient reaction to the complaints of such abused persons, resulting in the de facto impunity of the perpetrators of acts of torture. *De jure* impunity of the perpetrators of torture and other cruel, inhuman or degrading treatment or punishment results, *inter alia*, from amnesties, suspended sentences and reinstatement of discharged officers that have been granted by the authorities. Neither the report nor the oral statement of the Yugoslav delegation said anything about the Yugoslav Government's efforts concerning the rehabilitation of the torture victims, the amount of compensation they receive and the actual extent of redress afforded them.

49. The Committee hopes that in the future it will be possible to bridge the disconcerting discrepancy between the Yugoslav report and the apparent reality of abuse. However, the Committee is also concerned with the apparent lack of political will on the part of the State party to comply with its obligations under the Convention.

5. Recommendations

50. The Committee calls upon the State party to fulfil the legal, political and moral obligations it undertook when it ratified the Convention. The Committee expects the second periodic report of Yugoslavia, already overdue, to address allegations of torture under Yugoslav jurisdiction and respond directly to them. The Committee expects, in particular, that the State party provides information concerning all specific allegations of torture handed over to its representatives during the dialogue with the Committee. In compliance with articles 10, 12, 13 and 14 of the Convention, the Committee would appreciate information on all the educational efforts that the Yugoslav Government intends to undertake with a view to preventing torture and breaches of article 16 of the Convention. In addition, the Committee would appreciate receiving information on legislative and practical measures the State party intends to undertake in order to provide victims of torture with appropriate redress, compensation and rehabilitation.

51. The Committee recommends the verbatim incorporation of the crime of torture into the Yugoslav criminal codes. In order to diminish the recurrence of torture in Yugoslavia, the Committee recommends that the State party legally and practically ensure the independence of the judiciary, the unrestricted access to counsel immediately after arrest, the shortening of the length of police custody to a maximum period of 48 hours, the shortening of the period of pre-trial post-indictment detention, strict exclusion of all evidence directly or indirectly derived from torture, effective civil redress and a vigorous criminal prosecution in all cases of torture and breaches of article 16 of the Convention.

52. The Committee finally calls upon the State party to submit its second periodic report by 30 November 1999.

B. Iceland

53. The Committee considered the initial report of Iceland (CAT/C/37/Add.2) at its 350th, 351st and 357th meetings, held on 12 and 17 November 1998 (CAT/C/SR.350, 351 and 357) and has adopted the following conclusions and recommendations:

1. Introduction

54. The Committee thanks the Government of Iceland for its frank cooperation and its representative for the constructive dialogue. It considers that the initial report of the State party fully conforms with the Committee's general guidelines for the preparation of reports and provides detailed information on the implementation of each provision of the Convention.

2. Positive aspects

55. The Committee notes with satisfaction that Iceland has made the declarations necessary to recognize the Committee's competence under article 21 and 22 of the Convention.

56. It also notes with satisfaction that the amendments to the Constitution adopted in 1995 enhance protection of human rights and establish, in particular, the absolute prohibition of torture.

57. The Committee finally commends the Icelandic authorities for the enactment of legislation and rules on the rights of arrested persons, interrogations by the police, and the protection of persons committed to psychiatric hospitals against their will.

3. Subjects of concern

58. The Committee is concerned over the fact that torture is not considered as a specific crime in the penal legislation of the State party.

59. It is equally concerned about the use of solitary confinement, particularly as a preventive measure during pre-trial detention.

4. Recommendations

60. The Committee recommends that:

(a) Torture as a specific crime be included in the penal legislation of Iceland;

(b) The Icelandic authorities review the provisions regulating solitary confinement during pre-trial detention in order to reduce considerably the cases to which solitary confinement could be applicable;

(c) The legislation concerning evidence to be adduced in judicial proceedings be brought in line with the provisions of article 15 of the Convention so as to explicitly exclude any evidence made as a result of torture;

(d) Information on constraining measures applied in psychiatric hospitals be included in Iceland's next periodic report.

C. Croatia

61. The Committee considered the second periodic report of Croatia (CAT/C/33/Add.4) at its 352nd, 353rd and 359th

meetings, on 13 and 18 November 1998 (CAT/C/SR.352, 353 and 359), and adopted the following conclusions and recommendations.

1. Introduction

62. Croatia accepted the Convention against Torture by succession and recognized the competence of the Committee to receive complaints, as provided for in articles 21 and 22 of the Convention, on 8 October 1991. Croatia has also been a party to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment since 1997.

63. The Committee notes with satisfaction that the second periodic report complies with the general guidelines for periodic reports prepared by the Committee. Although it was submitted a year and a half late, the report demonstrates the State party's willingness to cooperate with the Committee in order to fulfil its obligations under the Convention.

2. Positive aspects

64. Croatia has incorporated the crime of torture and acts constituting other inhuman, cruel or degrading treatment or punishment into its internal legislation in terms which are in keeping with the provisions of articles 4 and 16 of the Convention, since it makes these offences punishable by appropriate penalties which take into account their grave nature.

65. There have been some changes in the rules of criminal procedure, such as the introduction of the obligation to bring detainees before a judge within 24 hours so that a decision may be taken on the lawfulness of detention and the determination of the maximum time limits for pre-trial detention.

3. Subjects of concern

66. The Committee notes that the Amnesty Act adopted in 1996 is applicable to a number of offences characterized as acts of torture or other cruel, inhuman or degrading treatment or punishment within the meaning of the Convention.

67. The Committee is seriously concerned about allegations of ill-treatment and torture, some of which resulted in death and are attributable to law enforcement officials, especially the police.

68. The Committee is concerned about the incompetence revealed in investigations of cases of serious violations of the Convention, including deaths which have not yet been explained. It is also concerned about the lack of a sufficiently detailed report, which was to be prepared on the basis of the recommendations made following the consideration of the initial report.

4. Recommendations

69. As during the consideration of the initial report, the Committee recommends that the State party should make all necessary efforts to ensure that the competent authorities immediately conduct an impartial, appropriate and full investigation whenever they have to deal with allegations of serious violations made in a credible manner by non-governmental organizations.

70. The Committee also recommends that, through the intermediary of the competent authorities, the State party should take account of the evidence transmitted to it by the International Tribunal for the Former Yugoslavia and some non-governmental organizations concerning violations of human rights and, in particular, cases of torture and cruel, inhuman or degrading treatment or punishment.

71. The Committee recommends that constitutional complaints should be received directly by the Constitutional Court in all cases of allegations of torture and other cruel, inhuman or degrading treatment or punishment.

D. United Kingdom of Great Britain and Northern Ireland and Dependent Territories

72. The Committee considered the third periodic report of the United Kingdom of Great Britain and Northern Ireland and Dependent Territories (CAT/C/44/Add.1) at its 354th, 355th and 360th meetings, held on 16 and 19 November 1998 (CAT/C/SR.354, 355 and 360) and has adopted the following conclusions and recommendations:

1. Introduction

73. The third periodic report of the United Kingdom of Great Britain and Northern Ireland was due on 6 January 1998 and was received on 2 April 1998. In every respect it conformed to the guidelines of the Committee pertaining to the preparation of such periodic reports. In particular the Committee found it helpful to have its recommendations from the examination of the second periodic report summarized at the outset together with a short statement concerning the action the State party had taken in that respect.

2. Positive aspects

74. (a) The enactment of the Human Rights Act, 1998;

(b) The enactment of the Immigration Commission Act, 1998;

(c) The "Peace Process" in Northern Ireland, pursuant to the Good Friday Agreement;

(d) The removal of corporal punishment as a penalty in several of the Dependent Territories.

3. Factors and difficulties impeding the application of the provisions of the Convention

75. The continuation of the state of emergency in Northern Ireland, noting that no exceptional circumstances can ever provide a justification for failure to comply with the Convention.

4. Subjects of concern

76. (a) The number of deaths in police custody and the apparent failure of the State party to provide an effective investigative mechanism to deal with allegations of police and prison authorities' abuse, as required by article 12 of the Convention, and to report publicly in a timely manner;

(b) The use of prisons as places in which to house refugee claimants;

(c) The retention of detention centres in Northern Ireland, particularly Castlereagh Detention Centre;

(d) The rules of evidence in Northern Ireland that admit confessions of suspected terrorists upon a lower test than in ordinary cases and in any event permits the admission of derivative evidence even if the confession is excluded;

(e) Sections 134 (4) and (5) (b) (iii) of the Criminal Justice Act 1988, appear to be in direct conflict with article 2 of the Convention;

(f) Sections 1 and 14 of the State Immunity Act, 1978, seem to be in direct conflict with the obligations undertaken by the State party pursuant to articles 4, 5, 6 and 7 of the Convention;

(g) The continued use of plastic bullet rounds as a means of riot control;

(h) The dramatic increase in the number of inmates held in prisons in England and Wales over the last three years.

5. Recommendations

77. (a) The closure of detention centres, particularly Castlereagh, at the earliest opportunity;

(b) The reform of the State Immunity Act, 1978, to ensure that its provisions conform to the obligations contained in the Convention;

(c) The reform of sections 134 (4) and 5 (b) (iii) of the Criminal Justice Act, 1988, to bring them into conformity with the obligations contained in article 2 of the Convention;

(d) The abolition of the use of plastic bullet rounds as a means of riot control;

(e) Reconstruction of the Royal Ulster Constabulary so that it more closely represents the cultural realities of Northern Ireland. This should continue to be associated with an extensive programme of re-education for members of the Royal Ulster Constabulary directed at the objectives of the Peace Accord and the best methods of modern police practices;

(f) The Committee finally recommends that in the case of Senator Pinochet of Chile, the matter be referred to the office of the public prosecutor, with a view to examining the feasibility of and if appropriate initiating criminal proceedings in England, in the event that the decision is made not to extradite him. This would satisfy the State party's obligations under articles 4 to 7 of the Convention and article 27 of the Vienna Convention on the Law of Treaties of 1969.

E. Hungary

78. The Committee considered the third periodic report of Hungary (CAT/C/34/Add.10) at its 356th, 357th and 361st meetings, held on 17 and 19 November 1998 (CAT/C/SR.356, 357 and 361) and has adopted the following conclusions and recommendations:

1. Introduction

79. The Committee examined the initial report of Hungary in 1989 and its second periodic report in 1993. The third periodic report of Hungary complies with the relevant guidelines but whereas it was due in 1996, it was submitted in April 1997. Hungary has recognized the competence of the Committee to receive and consider communications, under both articles 21 (1) and 22 of the Convention. It has also adhered to the European Convention on the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

2. Positive aspects

80. The Committee notes with satisfaction that Hungary earlier this year withdrew its reservation on geographical limitation to the 1951 Geneva Convention relating to the Status of Refugees, that previously excluded non-European asylum seekers. The Committee also notes with satisfaction, *inter alia*, the new legislation on asylum; Act LIX 1997 on Criminal Punishment System; the Ombudsman mechanism and Hungary's compliance with the previous recommendations of the Committee.

3. Subjects of concern

81. The Committee is concerned with the provisions of article 123 of the Criminal Code of Hungary that makes torture punishable only if the soldier or policeman committing the act was aware that by so doing he or she was committing a criminal offence. The Committee is also concerned about the persistent reports that an inordinately high proportion of detainees is roughly handled or treated cruelly before, during and after interrogation by the police and that a disproportionate number of detainees and/or prisoners serving their sentence are Roma.

82. The Committee is disturbed by information to the effect that a number of complaints of torture or treatment contrary to article 16 of the Convention do not result in the initiation of investigations by prosecutors.

83. The Committee is concerned about reports on conditions in prisons, detention centres and holding centres for refugees such as, *inter alia*, overcrowding, lack of exercise, education and hygiene.

4. Conclusions and recommendations

84. The Committee recommends that all necessary measures, including, in particular, prompt access to defence counsel assistance soon after arrest, and improved training, be taken to prevent and eradicate torture and all acts of cruel, inhuman or degrading treatment or punishment.

85. The Committee requests that Hungary should include in its next periodic report all relevant statistics, data and information on:

(a) The number of complaints about ill-treatment; the proportion they represent in relation to the total number of cases investigated and, in particular, the proportion of Roma complaints, detainees and prisoners;

(b) The number and proportion of cases discontinued by prosecutors, i.e. cases of torture or violations of article 16, the reasons, if any, for such discontinuance and the measures taken to ensure the complete impartiality and effectiveness of the investigation of the aforesaid complaints or accusations;

(c) Complaints against military personnel for alleged torture of civilians and the justification for military prosecutors handling such cases.

86. The Committee further urges the State party to take all appropriate action necessary to bring the Hungarian translation of article 3 (1) of the Convention in line with the authentic text of the aforesaid article.

87. The Committee urges the State party to re-examine article 123 of the Criminal Code and to effect the necessary amendments thereto in order to ensure its consonance with the terms and purposes of the Convention.

F. Tunisia

88. The Committee considered the second periodic report of Tunisia (CAT/C/20/Add.7) at its 358th, 359th and 363rd meetings, held on 18 and 20 November 1998 (CAT/C/SR.358, 359 and 363) and has adopted the following conclusions and recommendations:

1. Introduction

89. Tunisia ratified the Convention on 23 September 1988 and made the declarations provided for in articles 21 and 22.

90. Its second periodic report was due on 22 October 1993. The Committee regrets that the report was received on 10 November 1997 only.

2. Positive aspects

91. During the period covered by the report measures were taken by the authorities to build a legal and constitutional framework for the promotion and protection of human rights. The Committee welcomes the establishment of a number of human rights posts, offices and units within the executive branch and within the civil society. The Committee also welcomes the efforts that were made to raise the level of awareness of the principles of human rights in the society. The Committee noted, in particular, the publishing of a code of conduct for law enforcement officials, the setting up of human rights departments in Tunisian universities and the establishment of human rights units in some key ministries.

92. The Committee also notes that, for the first time, an independent commission of investigation was established to examine the allegations of abuses that took place in 1991.

93. The Tunisian Constitution provides that duly ratified treaties have a higher authority than laws. Thus, the

provisions of the Convention take precedence over domestic legislation.

3. Factors and difficulties impeding the application of the provisions of the Convention

94. The Committee is aware of the challenges that were facing the Government during the period covered by the report. However, the Committee emphasizes that no exceptional circumstances can ever provide a justification for failure to comply with the terms of the Convention.

4. Subjects of concern

95. The Committee reiterates its views that the definition of torture under Tunisian law is not in conformity with article 1 of the Convention, as the Tunisian Criminal Code, *inter alia*, uses the term "violence" instead of torture and article 101 of the Criminal Code penalizes the use of violence only when it is used without just cause.

96. The Committee is concerned over the wide gap that exists between law and practice with regard to the protection of human rights. The Committee is particularly disturbed by the reported widespread practice of torture and other cruel and degrading treatment perpetrated by security forces and the police, which, in certain cases, resulted in death in custody. Furthermore, it is concerned over the pressure and intimidation used by officials to prevent the victims from lodging complaints.

97. The Committee is concerned that many of the regulations existing in Tunisia for arrested persons are not adhered to in practice, in particular:

(a) The limitation of pre-trial detention to the 10-day maximum prescribed by law;

(b) The immediate notification of family members;

(c) The requirement of medical examination with regard to allegations of torture;

(d) The carrying out of autopsies in all cases of death in custody.

98. The Committee notes that arrests are very often made by plain clothes agents who refuse to show any identification or warrant.

99. The Committee is particularly disturbed by the abuses directed against female members of the families of detainees and exiled persons. It has been reported that dozens of women were subjected to violence and sexual abuses or sexual threats in order to put pressure on or to punish their imprisoned or exiled relatives.

100. The Committee feels that, by constantly denying these allegations, the authorities are in fact granting those responsible for torture immunity from punishment, thus encouraging the continuation of these abhorrent practices.

101. The Committee notes further that the State party does not accede to requests of extradition of political refugees. The Committee expresses its concern that this should not be the only exception for refusal of extradition. In this regard, the Committee draws the attention of the State party to article 3 of the Convention, which prohibits the extradition of a person if "there are substantial grounds for believing that he would be in danger of being subjected to torture".

5. Recommendations

102. The Committee calls upon the State party to put an end to the degrading practice of torture and to eliminate the gap between the law and its implementation and in particular to take up the following measures:

(a) To ensure strict enforcement of the provisions of law and procedures of arrest and police custody;

(b) To strictly enforce the procedures of registration, including notification of families of persons taken into custody;

(c) To ensure the right of victims of torture to lodge a complaint without the fear of being subjected to any kind of reprisal, harassment, harsh treatment or prosecution, even if the outcome of the investigation into his claim does not prove his or her allegation, and to seek and obtain redress if these allegations are proven correct;

(d) To ensure that medical examinations are automatically provided following allegations of abuse and an autopsy is performed following any death in custody; and that the findings of all investigations concerning cases of torture are made public, and that this information should include details of any offences committed, the names of the offenders, the dates, places and circumstances of the incidents and the punishment received by those who were found guilty.

103. The Committee urges the State party to take the following measures:

(a) To reduce the police custody period to a maximum of 48 hours;

(b) To bring the relevant articles of the Criminal Code into line with the definition of torture as contained in article 1 of the Convention;

(c) To amend the relevant legislation to ensure that no evidence obtained through torture shall be invoked as

evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.

104. The Committee urges the State party to submit its third periodic report by 30 November 1999.

6. Decision of the Committee on the observations submitted by Tunisia

105. In accordance with article 19, paragraph 4, of the Convention and rule 68, paragraph 1, of its rules of procedure, the Committee, on 26 April 1999, decided, at its discretion, to include the observations on the Committee's conclusions and recommendations received from Tunisia on 27 November 1998 in its annual report. The text of the observations of the State party reads as follows:

> **"Comments by the Tunisian Government on the conclusions and recommendations of the Committee against Torture following its consideration of Tunisia's second periodic report**
>
> "Tunisia, which has ratified the Convention against Torture, is one of the few countries to have made declarations under articles 21 and 22 of that Convention without entering any reservations. It would like to point out that, pursuant to article 32 of the Tunisian Constitution, conventions become law as soon as they are duly ratified.
>
> "This political and legal commitment has been implemented in practice and in all circumstances, through the strict application of ordinary law, without any discrimination or exception. Moreover, though it was faced with barbaric criminal and terrorist acts perpetrated by fundamentalists throughout the period covered by the report (1990-1993), Tunisia did not declare a state of emergency, introduce special courts or employ special procedures, as permitted under article 4 of the International Covenant on Civil and Political Rights.
>
> "The definition of torture, as given in article 1 of the Convention, is an integral part of Tunisian law, because the Convention became law as soon as it was ratified. Moreover, the international instrument takes precedence over national law in the hierarchy of legal standards, and national law is thus interpreted in conformity with the Convention's provisions.
>
> "The concern raised by the Committee against Torture over the alleged wide gap between law and practice with regard to the protection of human rights in Tunisia has no basis in fact. All the abuses mentioned have been the subject of administrative and judicial investigation in conformity with the law. Moreover, political will has been demonstrated many times by the setting up of commissions of inquiry.
>
> "Disciplinary as well as judicial penalties have been imposed on officials when their responsibility has been established. The statistics published by the special commissions of investigation as well as by the Higher Committee on Human Rights and Fundamental Freedoms provide tangible proof that no pressure or intimidation is used to prevent victims from lodging complaints, and they also refute the allegation that law-enforcement officials enjoy impunity.
>
> "Furthermore, the fact that complaints are registered by the human rights units and the various administrative and legal bodies, and that the individuals concerned are safeguarded against any possible pressure, invalidates the allegations.
>
> "All the existing legislation and regulations in Tunisia relating to persons under arrest are mandatory and must be strictly and promptly applied. Consequently, any infringement is severely punished with disciplinary and judicial measures. All departments with responsibility for places of detention are obliged to keep a special numbered register including the identities of all persons held in custody and indicating the time and date that the custody period begins and ends (article 13 *bis* of the Code of Criminal Procedure).
>
> "Administrative checks are carried out regularly and severe penalties are provided for by law in articles 172 and 250 of the Penal Code to curb abuses. Following the conclusions of the report by the Chairman of the Higher Committee on Human Rights and Fundamental Freedoms, measures have been instituted to improve monitoring of entries made in the registers. Action is being taken in this regard to make officials more aware of human rights culture (circulars issued by the Minister of the Interior, notices in police stations, a code of conduct, training at police and national guard schools, etc).
>
> "The Committee's conclusions that laws have not been enforced are totally unfounded.
>
> "Immediate notification of an arrest to family members of the person being held in custody is not, as stated in the Committee's conclusions, a rule that is not adhered to in practice; it is in fact an administrative measure which is implemented with a view to consolidating the protection of human rights.

The Committee's comment should have been included in the recommendations rather than among the so-called 'subjects of concern'.

"A medical examination, which is a right expressly guaranteed by law and can be carried out at the mere request of the detainee or members of his or her family, is in fact ordered whenever allegations of torture are brought before the relevant administrative or judicial authorities. Clearly, therefore, the Committee's criticisms in that regard in no way reflect the real situation.

"We are surprised at the Committee's concern over the practice of carrying out autopsies in all cases of death in custody, since it was not a subject of discussion between the experts and the Tunisian delegation. Tunisia's report makes it clear that carrying out an autopsy is standard practice in all cases of death in places of detention and prisons, even when there is no allegation of torture. This practice conforms to the provisions of article 48 of the law of 1 August 1957 governing the civil registry and the provisions of article 87 of the decree of 4 November 1988 on prison regulations.

"The Committee's comment on arrests made by plain-clothes agents who refuse to show identification or a warrant is unfounded. Officers who carry out arrests, whether they are in official uniform or in civilian clothing, are obliged to disclose their identity and to show their professional card. An officer failing to fulfil this obligation, may be subject to disciplinary and criminal proceedings (article 250 of the Penal Code). Any record of a statement taken by an officer who has not specified his or her identity is annullable, since it violates the interests of the accused and the fundamental rules of procedure (article 199 of the Code of Criminal Procedure).

"The Committee's conclusions on allegations of sexual or other abuse against women members of the families of detainees and exiled persons are so obviously biased as to be absurd.

"The Tunisian delegation has already refuted these allegations in an exhaustive legal and practical analysis drawing attention to the lies and manipulation perpetrated by extremist elements, which are intended to tarnish Tunisia's image and arouse the sympathy of the countries where they live, in the hope of obtaining permission for their families to join them.

"The Tunisian authorities challenge anyone to produce the slightest evidence in support of these allegations.

"Tunisia would like to point out its significant achievements in protecting and promoting women's rights, and to express its indignation at the Committee's conclusions on the subject, which it judges to be entirely unsubstantiated. Needless to say, the false allegations which prompted these conclusions have not been the subject of petitions to the courts or human rights units.

"Moreover, as the Committee recognizes, Tunisia prides itself on the fact that it does not grant extradition requests for political refugees. It would like to point out, however, that the task of assessing the potential risk of torture in requesting countries belongs to the Indictment Division of the Tunis Court of Appeal, which is responsible for extradition matters. This court has a duty to observe the provisions of article 3 of the Convention, an integral part of Tunisian law which the judge is bound to respect.

"The Tunisian Government wishes to express its profound regret at the Committee's conclusions, which have ignored Tunisia's report as well as the responses given by its delegation in the recent discussions.

"Some of the points made in the conclusions were not even raised as subjects for discussion between the members of the Committee and the Tunisian delegation. This leads us to believe that the conclusions were reached in advance and they clearly reflect the totally unjustified positions of certain non-governmental organizations."

G. The former Yugoslav Republic of Macedonia

106. The Committee considered the initial report of the former Yugoslav Republic of Macedonia (CAT/C/28/Add.4) at its 366th, 369th and 373rd meetings held on 27, 28 and 30 April 1999 (CAT/C/SR.366, 369 and 373) and adopted the following conclusions and recommendations:

1. Introduction

107. The former Yugoslav Republic of Macedonia as a successor State recognized the obligations of the former Yugoslav Federation and on 12 December 1994 became a State party to the Convention. Accordingly, the former

Yugoslav Republic of Macedonia continues to recognize the competence of the Committee against Torture with regard to articles 20, 21 and 22 of the Convention.

108. The Committee was grateful to the State party for the size and quality of its delegation which contributed in a large measure to the fruitful dialogue developed during the consideration of the report.

109. The submission of the initial report of the former Yugoslav Republic of Macedonia was delayed for reasons that were largely outside the control of the State party. The report generally is in conformity with the guidelines of the Committee for the preparation of State party reports.

2. Positive aspects

110. The Committee considers as positive aspects the following:

(a) Article 11 of the Constitution of the former Yugoslav Republic of Macedonia provides that the human right to physical and moral dignity is irrevocable and that any form of torture, or inhuman or humiliating conduct or punishment is prohibited;

(b) It is very important that the Criminal Code defines as a crime the act of a public official who while performing his duty, applies force, threat or some other forbidden method of extorting a confession;

(c) The establishment of a State Commission for the supervision of penal and correctional institutions;

(d) The participation of public officials in seminars on the prohibition of abuse and torture, organized by the Council of Ministers and the Council of Europe;

(e) The evident willingness of the State party to implement the provisions of the Convention;

(f) The commitment of the former Yugoslav Republic of Macedonia to respect the principles and the norms contained in the Convention by including extensive training of police and medical personnel in its system of education and re-education. Of particular note is the country's incorporation of the norms reinforcing the prohibition of torture into its primary and secondary school curricula.

3. Factors and difficulties impeding the application of the provisions of the Convention

111. The Committee recognizes that the current situation in the former Yugoslav Republic of Macedonia puts a considerable burden on the Government but should not prevent the Government from making all efforts to fully implement the provisions of the Convention.

4. Subjects of concern

112. The absence of a specific crime of torture as defined in the Convention.

113. The ambiguity of the provisions in the Criminal Code with regard to elements and penalty. This leads to confusion as to the way in which article 2, paragraph 3 and article 4 of the Convention are implemented.

5. Recommendations

114. The definition of torture as contained in the Convention and torture as a defined crime should be incorporated into the Criminal Code of the former Yugoslav Republic of Macedonia with appropriate penalties attached to it.

115. The State party is urged to investigate complaints of maltreatment by government officials particularly those that relate to ethnic minorities. The investigations should be prompt and impartial and those officials that may be responsible for such maltreatment should be prosecuted.

116. The former Yugoslav Republic of Macedonia, at its borders, should fully comply with its obligations under article 3 of the Convention even in the present situation of a massive influx of refugees from Kosovo.

117. The Committee would like to know, in particular, from the State party what is the specific legal source providing that the justification of superior orders is not applicable to the crime of torture.

H. Mauritius

118. The Committee considered the second periodic report of Mauritius (CAT/C/43/Add.1) at its 368th, 371st and 375th meetings, held on 28 and 29 April and 3 May 1999 (CAT/C/SR.368, 371 and 375) and has adopted the following conclusions and recommendations.

1. Introduction

119. The Committee welcomes the report of Mauritius submitted on time and supplemented and updated by the Solicitor-General of the State party, who introduced it. The above clearly reflects the continuing efforts of the State party to comply with its international human rights obligations.

2. Positive aspects

120. The Committee takes note of the following, *inter alia*, positive aspects, many of which closely follow upon recommendations made by it during the consideration of the initial report:

(a) The abolition of the death penalty;

(b) The recent coming into force of the Protection of Human Rights Law, which establishes the National Human Rights Commission, the competence of which includes examination of torture complaints;

(c) The amendment of article 16 of the Constitution in order to prohibit discrimination based on gender;

(d) The training programmes for the police and other law enforcement officials with a human rights component.

3. Factors and difficulties impeding the application of the provisions of the Convention

121. No factors or particular difficulties emerged as a result of the consideration of the report by the Committee and it was clear that the State party, a developing country, is to the best of its ability carrying out its obligations under the Convention.

4. Subjects of concern

122. The Committee is concerned about the fact that six years after its accession to the Convention and four years after the consideration of its initial report, the State party has failed to incorporate into its internal legislation important provisions of the Convention namely:

(a) A definition that encompasses all cases covered by article 1 of the Convention;

(b) Article 3 of the Convention *in toto*, i.e. covering not only extradition but also, expulsion and return (refoulement);

(c) The provisions of article 5, subparagraphs 1 (b) and (c) and 2 in conjunction with those of articles 8 and 9.

5. Recommendations

123. The Committee recommends that the State party should take the following measures:

(a) Enact legislation defining torture in accordance with article 1 and considering it as a specific crime;

(b) Clarify through appropriate legislation that superior orders can never be invoked as a justification of an act of torture;

(c) Introduce legislation that would give effect to all the provisions of article 3 of the Convention by preventing extradition, return and expulsion of persons in danger of being subjected to torture;

(d) Take legislative measures to establish universal jurisdiction as required by article 5 of the Convention;

(e) Appraise the Committee of the results of the investigation and judicial inquiries into the death, whilst in custody, of Mr. Kaya;

(f) Ensure that all instances of torture and especially those resulting in death, are promptly and effectively investigated by an independent body and that the perpetrators be brought immediately to justice.

I. Venezuela

124. The Committee considered the initial report of Venezuela (CAT/C/16/Add.8) at its 370th, 373rd and 377th meetings, held on 29 and 30 April and 4 May 1999 (CAT/C/SR.370, 373 and 377), and adopted the following conclusions and recommendations.

1. Introduction

125. Venezuela ratified the Convention on 29 June 1991. It made the declarations provided for under articles 21 and 22 on 21 December 1993, and has not formulated any reservations or additional declarations.

126. Venezuela is also a State party to the Inter-American Convention to Prevent and Punish Torture.

127. The initial report was submitted with several years' delay and does not provide sufficient information on the practical application of the Convention. The Committee appreciates the assurance given by the State's representative that these shortcomings will be overcome and that the next report will be submitted on time and in the appropriate form.

128. A large and well-qualified delegation was present for the introduction of the report. The head of delegation updated and elaborated on it in his statement and through documents made available to the members of the Committee; responses were given to members' observations and questions. This procedure facilitated a more detailed examination, a better understanding of the report and a frank and constructive dialogue, for which the Committee is grateful.

2. Positive aspects

129. In a declaration of principle, the head of the delegation expressed his Government's determination to be increasingly strict in the area of human rights.

130. The Code of Penal Procedure, which will enter into force shortly, contains very positive provisions that make good the deficiencies of the existing Code of Criminal Procedure; these deficiencies are identified as being highly conducive to the practice of torture and to shortcomings in its investigation and punishment. The full implementation of the new provisions should contribute to the eradication of torture in Venezuela.

131. The Government intends to submit for approval by the Legislature a bill to prevent and punish torture and cruel, inhuman or degrading treatment or punishment, in order to give effect to the provisions of the Convention in domestic law.

132. The state of emergency in force since 1994 has been terminated in the frontier districts and the restrictions on constitutional guarantees have accordingly been removed.

133. The Act intended to combat violence against women and the family has entered into force; and the Organizational Act for the Protection of Children and Adolescents has been approved, and will enter into force next year. Both laws are intended to improve the protection of two particularly vulnerable social sectors who frequently fall victim to discrimination, abuse or cruel, inhuman or degrading treatment.

134. Training initiatives have been taken for law enforcement and prison personnel and have been developed with support from foundations and non-governmental organizations; these are described in the part of the report relating to article 10 of the Convention. The Public Prosecutor's Office has taken the initiative of organizing a national programme of workshops to acquaint medical professionals with recent scientific developments in the investigation of torture, in particular torture that leaves no visible or obvious marks.

3. Factors and difficulties impeding the application of the Convention

135. The marked contrast between the extensive legislation on matters addressed by the Convention and the reality observed during the period covered by the report would appear to indicate insufficient concern on the part of the authorities responsible for ensuring the effective observance of the Convention.

4. Subjects of concern

136. The high number of cases of torture and cruel, inhuman or degrading treatment that have occurred since the Convention's entry into force; they have been perpetrated by all the State security bodies.

137. The failure of the competent organs of the State to fulfil their duty to investigate complaints and punish those responsible, who generally enjoy impunity; this encourages repetition of the conduct in question. Not until the report was submitted was the Committee informed of the imposition of administrative penalties, but it has not been informed of any judicial conviction for the offence of torture.

138. The continued existence in the Penal Code, the Armed Forces (Organization) Act and the Code of Military Justice of provisions exempting from criminal responsibility persons who act on the basis of due obedience to a superior; these provisions are incompatible with both article 46 of the Constitution and article 2, paragraph 3, of the Convention.

139. The non-existence of effective procedures for monitoring respect for the physical integrity of detainees in prisons, both civilian and military.

140. The overcrowding in prisons, where capacity is exceeded by over 50 per cent, the lack of segregation of the prison population, the fact that almost two thirds of prisoners are awaiting trial and the endemic violence rampant in Venezuelan jails mean that prisoners are permanently subjected to forms of inhuman or degrading treatment.

5. Recommendations

141. The prompt consideration, discussion and approval of the Bill relating to torture, whether it takes the form of a separate law or is incorporated in the provisions of the Penal Code.

142. The legislation in question must provide for the hearing and trial in the ordinary courts of any charge of torture, regardless of the body of which the accused is a member.

143. During the consideration and discussion of the Bill relating to torture, the Executive and the Legislature should request and bear in mind the opinions of national non-governmental organizations for the defence and promotion of human rights, whose experience in looking after victims of torture and cruel, inhuman or degrading treatment may help to perfect this legal initiative.

144. In the process of drafting a new constitution a provision should be included which grants constitutional status to human rights treaties ratified by the State and their

self-executing nature, as has been recognized in the decisions of the Supreme Court of Justice.

145. In addition, the new constitution, through such provisions as may appear appropriate, should strengthen the legal conditions for the protection of personal security and integrity and for the prevention of practices that violate such security and integrity.

146. In connection with article 3 of the Convention, which stipulates that a person may not be expelled, returned or extradited to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture, the Committee considers that, for the purposes of the improved consideration of the advisability of applying this provision to a particular case, it would appear appropriate for questions of passive extradition to be considered at two instances, a procedure which characterizes the Venezuelan judicial system.

147. On the same question, it is recommended that the State should regulate procedures for dealing with and deciding on applications for asylum and refugee status which envisage the opportunity for the applicant to attend a formal hearing and to make such submissions as may be relevant to the right which he invokes, including pertinent evidence, with protection of the characteristics of due process of law.

148. Repeal of rules providing for exemption from criminal responsibility on the grounds that the person concerned is acting in due obedience to a superior. Although these rules are contrary to the Constitution, in practice they leave open to judicial interpretation provisions which are incompatible with article 3, paragraph 2, of the Convention.

149. Continue the human rights training initiatives for State law enforcement officials and prison personnel, and extend them to all police and security forces.

150. Establish a governmental programme aimed at the physical, psychological and social rehabilitation of torture victims.

J. Bulgaria

151. The Committee considered the second periodic report of Bulgaria (CAT/C/17/Add.19) at its 372nd, 375th and 379th meetings, held on 30 April 1999 and 3 and 5 May 1999 (CAT/C/SR.372, 375 and 379) and has adopted the following conclusions and recommendations.

1. Introduction

152. The Committee welcomes the second periodic report of Bulgaria submitted in accordance with the guidelines for the preparation of State party reports. It appreciates the information provided by the representative of Bulgaria in his introductory statement and the open and fruitful dialogue.

153. However, the Committee regrets that the second periodic report was seven years overdue.

2. Positive aspects

154. The Committee notes with great satisfaction, that the State party has:

(a) Made the declarations recognizing the Committee's competence under articles 21 and 22 of the Convention;

(b) Ratified among other international and regional treaties the European Convention on Prevention of Torture and Other Inhuman or Degrading Treatments or Punishment;

(c) Abolished the death penalty;

(d) Continued to reform and amend its domestic laws in order to protect human rights;

(e) Continued its efforts to educate law enforcement officials in the field of human rights, particularly, with regard to the prohibition against torture.

3. Factors and difficulties impeding the application of the provisions of the Convention

155. The Committee takes note of the economic problems currently existing in Bulgaria and the adverse effect that they have on some of the reforms in progress.

156. It recalls, however, that such difficulties could never justify breaches of articles 1, 2 and 16 of the Convention.

4. Subjects of concern

157. The lack in domestic law of a definition of torture in accordance with article 1 of the Convention and the failure to ensure that all acts of torture are offences under criminal law.

158. The legislative and other measures are not sufficiently effective to ensure the respect of the provisions of article 3 of the Convention.

159. The lack of measures to ensure universal jurisdiction with regard to acts of torture in all circumstances.

160. The continued reporting from reliable non-governmental organizations on ill-treatment by public

officials, particularly the police, especially against persons belonging to ethnic minorities.

161. The deficiencies relating to a prompt and impartial system of investigation of alleged cases of torture and the failure to bring those allegations before a judge or other appropriate judicial authority.

5. Recommendations

162. The Committee recommends that the State party:

(a) Continues its effort to implement the provisions of the Convention, particularly articles 1, 2, 3, 4, 5 and 6, by adopting the necessary legislative measures in that regard;

(b) Continues its policies and efforts to educate law enforcement personnel as well as medical personnel about the prohibition of torture;

(c) Take effective steps to put an end to practices of ill-treatment by the police which still occur;

(d) That all prisoners' correspondence addressed to international bodies of investigation or settlement of disputes be excluded from "censor checks" by prison personnel or other authorities;

(e) Submit its third and fourth periodic reports due on 25 June 1996 and 25 June 2000 respectively on 25 June 2000 at the latest.

K. Italy

163. The Committee considered the third periodic report of Italy (CAT/C/44/Add.2) at its 374th, 377th and 381st meetings, held on 3, 4 and 6 May 1999 (CAT/C/SR.374, 377 and 381) and has adopted the following conclusions and recommendations.

1. Introduction

164. The Committee welcomes the timely submission of the third periodic report of Italy and thanks the representatives of the State party for their good oral presentation and their collaborative and constructive attitude in the dialogue with the Committee.

2. Positive aspects

165. The Committee welcomes:

(a) The introduction in Parliament of a bill aiming at adding the crime of torture as an autonomous crime and the setting-up of a special fund for the victims of acts of torture;

(b) The introduction of a number of modifications in the regime of precautionary measures to protect arrested persons and detainees from ill-treatment or torture, such as the rule requiring that questioning outside the court has to be documented by sound or audio-visual recordings (Law No. 332 of 1995);

(c) The passing by Parliament of Law No. 40 of 6 March 1998 governing immigration and aliens, which, in particular, grants the aliens who are legally residing in the territory of the State party, parity with the Italian citizens;

(d) The assurances contained in the report that a different and new policy of accepting foreigners is to be energetically carried forward;

(e) The consideration by the Italian Parliament of a bill that accords humanitarian protection and the right of asylum and intends to institute an organic asylum regime;

(f) The fact that foreign prisoners who are granted measures alternative to detention may also be granted temporary work permits.

3. Factors and difficulties impeding the application of the provisions of the Convention

166. While it does not underestimate the difficulties created by the presence of a large number of foreigners of different cultures and nationalities on the Italian territory, the Committee expects that the new law on immigration along with the continued efforts on the part of the authorities will help ease the situation, especially since many of these foreigners had to flee their countries of origin due to severe conditions of unrest.

4. Subjects of concern

167. Despite the efforts of the authorities, the prison system remains overcrowded and lacking in facilities which makes the overall conditions of detention not conducive to the efforts of preventing inhuman or degrading treatment or punishment. In this regard, the Committee notes with concern, that reports of cases of ill-treatment in prison continued and that many of them involved foreigners.

168. The Committee is also concerned over the lack of training in the field of human rights, in particular, the prohibition against torture to the troops participating in peacekeeping operations and the inadequate number of military police accompanying them, which was responsible in part for the unfortunate incidents that occurred in Somalia.

5. Recommendations

169. The Committee recommends that:

(a) The legislative authorities in the State party proceed to incorporate into domestic law the crime of torture as defined in article 1 of the Convention and make provision of an appropriate system of compensation for torture victims;

(b) The Committee be informed of the progress and result of the judicial proceedings resulting from the incidents in Somalia;

(c) All prisoners' correspondence addressed to international procedures of investigation and settlement be excluded from "censor checks" by prison personnel or other authorities.

L. Luxembourg

170. The Committee considered the second periodic report of Luxembourg (CAT/C/17/Add.20) at its 376th, 379th and 383rd meetings, held on 4, 5 and 7 May 1999 (see CAT/C/SR.376, 379 and 383), and adopted the following conclusions and recommendations.

1. Introduction

171. The Committee welcomes the second periodic report of Luxembourg and the oral report given by the State party's representatives. It notes, however, that the report was submitted six years late.

2. Positive aspects

172. The Committee takes note of the following positive aspects:

(a) The formal abolition of the death penalty;

(b) Legislation concerning the entry and residence of foreigners, which prohibits the expulsion or return of a foreigner if he is in danger of being subjected to acts of torture or cruel, inhuman or degrading treatment in another country;

(c) The proposed amendments of criminal legislation relating to: (i) the characterization of torture as a specific offence; (ii) amendment of the law on extradition in order to bring it into line with article 3 of the Convention; (iii) establishment of universal competence concerning acts of torture; and (iv) improvement of guarantees for persons held in custody.

3. Factors and difficulties impeding the application of the provisions of the Convention

173. The Committee has noted no factor or difficulty impeding the effective implementation of the Convention for the State of Luxembourg.

4. Subjects of concern

174. The Committee is concerned about the following:

(a) The excessive length and frequent use of strict solitary confinement of detainees and the fact that this disciplinary measure may not be the subject of appeal;

(b) The situation of young offenders held in Luxembourg prisons;

(c) The disciplinary regime imposed on minors held in the socio-educational centres;

(d) The fact that the report did not cover all articles of the Convention, particularly articles 11, 14, 15 and 16.

5. Recommendations

175. The Committee recommends that the State party should:

(a) Adopt the legislation defining torture in accordance with article 1 of the Convention, and consider all acts of torture as a specific offence;

(b) Introduce into law the possibility of an effective appeal against the most severe disciplinary measures imposed on detainees and reduce the severity of these measures;

(c) End, as soon as possible, the practice of placing young offenders, including minors, in the prison for adults;

(d) Ensure that the obligations arising from articles 11, 12, 14 and 15 of the Convention are duly respected;

(e) Submit its third and fourth periodic reports, due on 28 October 1996 and 28 October 2000 respectively, by 28 October 2000 at the latest.

M. Libyan Arab Jamahiriya

176. The Committee considered the third periodic report of the Libyan Arab Jamahiriya (CAT/C/44/Add.3) at its 378th, 381st and 385th meetings, held on 5, 6 and 10 May 1999 (CAT/C/SR.378, 381 and 385), and has adopted the following conclusions and recommendations.

1. Introduction

177. The Committee welcomes the timely submission of the report prepared in accordance with the guidelines of the Committee. Likewise, the Committee welcomes the oral report of the representatives of the State party and the dialogue with them.

2. Positive aspects

178. The Committee wishes to reiterate its satisfaction, expressed in its conclusions when dealing with the State party's second periodic report, that the legal provisions of the State party generally conform with the requirements of the Convention.

179. Progress has been made in the efforts to improve education and information regarding prohibition against torture in the training of law enforcement personnel as well as medical personnel.

180. The Committee notes with satisfaction that application of corporal punishment has not been used in recent years.

3. Factors and difficulties impeding the application of the provisions of the Convention

181. The effect of the embargo on the State party, in force since 1992, which has not been lifted completely, causes severe difficulties in its economic and social life. However, such difficulties may not be invoked as justification of breaches of the provisions of the Convention, especially articles 1, 2 and 16.

4. Subjects of concern

182. It is a matter of concern for the Committee that neither the report nor the information given orally by the representatives of the Libyan Arab Jamahiriya provided the Committee with comments and answers that addressed substantially the subjects of concern indicated and the recommendations made by the Committee when dealing with the second periodic report of the State party in 1994. Consequently, the Committee reiterates, *inter alia*, the following subjects of concern:

(a) Prolonged incommunicado detention, in spite of the legal provisions regulating it, still seems to create conditions that may lead to violation of the Convention;

(b) The fact that allegations of torture in the State party continue to be received by the Committee.

183. It is a matter of concern for the Committee that, in practice, the State party had, in one incident, extradited persons to a country where there are substantial grounds for believing that they are in danger of being subjected to torture. The Committee did not agree with the State party that it was legally obliged to do so.

184. It is also a matter of concern that the wording of article 206 of the Penal Code could be an obstacle to the creation of independent human rights non-governmental organizations.

5. Recommendations

185. The Committee encourages the Libyan Government to consider making the declarations provided for under articles 21 and 22 of the Convention.

186. It also recommends that the law and the practices of the State party be brought in line with article 3 of the Convention.

187. The Committee further recommends that the Libyan authorities guarantee the free access of a person deprived of his liberty to a lawyer and to a doctor of his choice and to his relatives at all stages of detention.

188. The State party should send a clear message to all its law-enforcement personnel that torture is not permitted under any circumstances. In addition, those who committed the offence of torture should be subjected to a prompt and impartial investigation and rigorously prosecuted in accordance with the law.

189. Although corporal punishment has not been practised in recent years, it should be abolished by law.

N. Morocco

190. The Committee considered the second periodic report of Morocco (CAT/C/43/Add.2) at its 380th, 383rd and 387th meetings, held on 6, 7 and 11 May 1999 (see CAT/C/SR.380, 383 and 387), and adopted the following conclusions and recommendations.

1. Introduction

191. The Committee warmly welcomes the second periodic report of Morocco.

192. The report, which is in conformity with the Committee's guidelines for the presentation of periodic reports, and indeed the oral introduction by the head of the Moroccan delegation, did not evade any subject. This is a source of gratification to the Committee, which is grateful to the Moroccan delegation for the frank and constructive dialogue it has established.

2. Positive aspects

193. The Committee expresses its great satisfaction at certain measures taken by the State party to fulfil its treaty obligations. These measures have, *inter alia*, taken the following forms:

(a) The manifest political will to establish in Morocco the genuine rule of law; this will is clearly reflected in paragraphs 4, 6-10, 16 and 17 of the report;

(b) The payment of allowances to political detainees recently released by the Moroccan State, which has also borne the cost of medical care in cases where this has proved necessary;

(c) The favourable action taken on certain of the recommendations made by the Committee when it considered Morocco's initial report, including:

(i) The publication in the *Journal Officiel* of the Convention, which thereby becomes applicable throughout the Kingdom and enforceable in respect of all authorities;

(ii) The implementation of a substantial human rights education and awareness programme for law enforcement officials and indeed for other categories, such as school pupils;

(iii) The reform of prison policy with the aim of achieving greater humanization.

3. Factors and difficulties impeding the application of the provisions of the Convention

194. The Committee considers that there are no factors or difficulties impeding implementation of the Convention in Morocco.

4. Subjects of concern

195. The Committee is, however, very concerned about the following questions:

(a) The persistent non-existence, in Moroccan criminal legislation, of a definition of torture fully consistent with that contained in article 1 of the Convention, and of the classification as crimes of all acts liable to be characterized as torture pursuant to article 4 of the Convention;

(b) The maintenance of the reservations expressed in respect of article 20 and the non-existence of the declarations provided for in articles 21 and 22 of the Convention; this considerably restricts the scope of the Convention in respect of Morocco;

(c) Despite the efforts made, the persistence of allegations of torture and ill-treatment;

(d) The non-conformity of Moroccan legislation with the provisions of the Convention relating to return, expulsion and extradition.

5. Recommendations

196. The Committee recommends to the State party that it should:

(a) Introduce into its criminal legislation a definition of torture fully consistent with that contained in article 1 of the Convention and classify as crimes all acts liable to be characterized as torture;

(b) Withdraw the reservations expressed in respect of article 20, and make the declarations provided for in articles 21 and 22 of the Convention;

(c) Bring the legislation on return, expulsion and extradition into line with the relevant preventions of the Convention;

(d) Initiate, urgently if such has not already been done, impartial inquiries into the serious allegations of human rights violations brought to the attention of the Moroccan delegation by the Committee on the occasion of its consideration of the second report, and ensure, in recognized cases, that appropriate penalties are imposed on those responsible and that equitable compensation is granted to the victims.

O. Egypt

197. The Committee considered the third periodic report of Egypt (CAT/C/34/Add.11) at its 382nd, 385th and 389th meetings, held on 7, 10 and 12 May 1999 (CAT/C/SR.382, 385 and 389) and has adopted the following conclusions and recommendations.

1. Introduction

198. The Committee welcomes the third periodic report of Egypt, submitted some two and a half years late, but generally in accordance with the requirements for such a report. The Committee also welcomes the verbal introduction to the report by the Egyptian representatives.

2. Positive aspects

199. The release of large numbers of persons held under the Emergency Act, 1958.

200. The reduction of complaints of maltreatment by persons detained under the Emergency Act, 1958.

201. The broad literacy and educational programme undertaken by the Egyptian Government.

202. The creation of the Office of Human Rights in the Public Prosecutor's Department to investigate complaints of, *inter alia*, torture.

203. The Committee was pleased to learn of improvements in the quality of some of the Egyptian prisons.

204. The Committee was also pleased to learn that "hundreds" of torture victims have been compensated by the Egyptian civil courts.

205. The Committee is encouraged by the extensive dialogue in which it engaged with the Egyptian delegation.

3. Factors and difficulties impeding the application of the provisions of the Convention

206. The ongoing state of emergency in response to the persistent terrorist threat. This seems to have created a culture of violence among certain elements of the police and security forces. Such terrorist threat, of course, may not be invoked as justification for breaches of the provisions of the Convention, especially articles 1, 2 and 16.

4. Subjects of concern

207. The large number of allegations of torture and even of death relating to detainees made against both the police and the State Security Intelligence.

208. Despite the improvements made by the Government, the conditions of some prisons in Egypt.

209. The allegation from the World Organization against Torture of treatment of female detainees, by both the police and the State Security Intelligence, which sometimes involves sexual abuse or threat of such abuse in order to obtain information relating to husbands or other family members.

210. The Committee is seriously concerned at allegations that persons have been held in police or State Security Intelligence custody in defiance of court orders to release them.

5. Recommendations

211. The Committee recommends that Egypt take effective measures to prevent torture in police and State Security Intelligence custody and that all perpetrators be vigorously prosecuted.

212. It also recommends that effective steps be taken to protect women from threats of sexual abuse by police and officers of the State Security Intelligence as a means of obtaining information from them.

213. It further recommends that a proper registry of detainees, both police and State Security Intelligence, which is accessible to members of the public, be established and maintained.

214. The Committee encourages the Egyptian Government to continue with its policy of upgrading its prison facilities.

215. The Government of Egypt should provide the Committee with information in writing concerning the number and circumstances of deaths in custody over the past five years.

216. The Committee urges Egypt to consider making a declaration in favour of articles 21 and 22 of the Convention.

P. Liechtenstein

217. The Committee considered the second periodic report of Liechtenstein (CAT/C/29/Add.5) at its 384th, 387th and 389th meetings, held on 10, 11 and 12 May 1999 (CAT/C/SR.384, 387 and 389), and has adopted the following conclusions and recommendations.

1. Introduction

218. The Committee welcomes the submission of the report which, although two and one half years overdue, was prepared in accordance with the guidelines of the Committee. The Committee likewise welcomes the oral report of the representatives of the State party and the dialogue with them.

2. Positive aspects

219. There have been no reports of maltreatment of detainees during the period under review.

220. The legal provisions of the State party appear to generally conform to those required by the Convention.

221. The law and practice of Liechtenstein relating to asylum seekers appears to be in conformity with article 3 of the Convention.

3. Factors and difficulties impeding the application of the provisions of the Convention

222. The Committee is unaware of any factors or difficulties impeding the application of the provisions of the Convention.

4. Subjects of concern

223. The Committee raised no subjects of concern.

5. Recommendations

224. The Committee recommends that the State party continue to implement the terms of the Convention in the effective way in which it has done in the past.

225. It also recommends that the third periodic report be presented to the Committee in accordance with its due date.

Chapter V
Activities of the Committee under article 20 of the Convention

226. In accordance with article 20, paragraph 1, of the Convention, if the Committee receives reliable information which appears to it to contain well-founded indications that torture is being systematically practised in the territory of a State party, the Committee shall invite that State party to cooperate in the examination of the information and, to this end, to submit observations with regard to the information concerned.

227. In accordance with rule 69 of the Committee's rules of procedure, the Secretary-General shall bring to the attention of the Committee information which is, or appears to be, submitted for the Committee's consideration under article 20, paragraph 1, of the Convention.

228. No information shall be received by the Committee if it concerns a State party which, in accordance with article 28, paragraph 1, of the Convention, declared at the time of ratification of or accession to the Convention that it did not recognize the competence of the Committee provided for in article 20, unless that State party has subsequently withdrawn its reservation in accordance with article 28, paragraph 2, of the Convention.

229. The Committee's work under article 20 of the Convention thus commenced at its fourth session and continued at its fifth to twenty-second session. During those sessions the Committee devoted the following number of closed meetings or part of closed meetings to its activities under that article:

Sessions	*Number of closed meetings*
Fourth	4
Fifth	4
Sixth	3
Seventh	2
Eighth	3
Ninth	3
Tenth	8
Eleventh	4
Twelfth	4
Thirteenth	3
Fourteenth	6
Fifteenth	4
Sixteenth	4
Seventeenth	4
Eighteenth	4
Nineteenth	4
Twentieth	5
Twenty-first	3
Twenty-second	8

230. In accordance with the provisions of article 20 and rules 72 and 73 of the rules of procedure, all documents and proceedings of the Committee relating to its functions under article 20 of the Convention are confidential and all the meetings concerning its proceedings under that article are closed.

231. However, in accordance with article 20, paragraph 5 of the Convention, the Committee may after consultations with the State party concerned decide to include a summary account of the results of the proceedings in its annual report to the State parties and to the General Assembly.

Chapter VI
Consideration of communications under article 22 of the Convention

232. Under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, individuals who claim that any of their rights enumerated in the Convention have been violated by a State party and who have exhausted all available domestic remedies may submit communications to the Committee against Torture for consideration. Forty out of 113 States that have acceded to or ratified the Convention have declared that they recognize the competence of the Committee to receive and consider communications under article 22 of the Convention. Those States are: Algeria, Argentina, Australia, Austria, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Ecuador, Finland, France, Greece, Hungary, Iceland, Italy, Liechtenstein, Luxembourg, Malta, Monaco, Netherlands, New Zealand, Norway, Poland, Portugal,

Russian Federation, Senegal, Slovakia, Slovenia, South Africa, Spain, Sweden, Switzerland, Togo, Tunisia, Turkey, Uruguay, Venezuela and Yugoslavia. No communication may be considered by the Committee if it concerns a State party to the Convention that has not recognized the competence of the Committee to do so.

233. Consideration of communications under article 22 of the Convention takes place in closed meetings (article 22, paragraph 6). All documents pertaining to the work of the Committee under article 22, i.e. submissions from the parties and other working documents of the Committee, are confidential.

234. In carrying out its work under article 22, the Committee may be assisted by a working group of not more than five of its members or by a special rapporteur designated from among its members. The working group or the special rapporteur submits recommendations to the Committee regarding the fulfilment of the conditions of admissibility of communications or assists it in any manner which the Committee may decide (rule 106 of the rules of procedure of the Committee). Special rapporteurs may take procedural decisions (under rule 108) during inter-sessional periods, thereby expediting the processing of communications by the Committee.

235. A communication may not be declared admissible unless the State party has received the text of the communication and has been given an opportunity to furnish information or observations concerning the question of admissibility, including information relating to the exhaustion of domestic remedies (rule 108, para. 3). Within six months after the transmittal to the State party of a decision of the Committee declaring a communication admissible, the State party shall submit written explanations or statements to the Committee clarifying the matter under consideration and the remedy, if any, which has been taken by it (rule 110, para. 2). In cases that require expeditious consideration, the Committee invites the States parties concerned, if they have no objections to the admissibility of the communications, to furnish immediately their observations on the merits of the case.

236. The Committee concludes examination of an admissible communication by formulating its Views thereon in the light of all information made available to it by the complainant and the State party. The Views of the Committee are communicated to the parties (article 22, paragraph 7, of the Convention and rule 111, para. 3, of the rules of procedure of the Committee) and are made available to the general public. Generally the text of the Committee's decisions declaring communications inadmissible under article 22 of the Convention are also made public without disclosing the identity of the author of the communication but identifying the State party concerned.

237. Pursuant to rule 112 of its rules of procedure, the Committee shall include in its annual report a summary of the communications examined. The Committee may also include in its annual report the text of its Views under article 22, paragraph 7, of the Convention and the text of any decision declaring a communication inadmissible.

238. At the time of adoption of the present report the Committee had registered 133 communications with respect to 19 countries. Out of them, 38 communications had been discontinued and 28 had been declared inadmissible. The Committee had adopted Views with respect to 34 communications and found violations of the Convention in 16 of them. Finally, 33 communications remained outstanding.

239. At its twenty-first session, the Committee decided to declare two communications admissible, to be considered on the merits. In addition, the Committee declared inadmissible communications Nos. 66/1997 (P.S.S. v. Canada) and 67/1997 (Akhidenor v. Canada), because they did not meet the conditions laid down in article 22, subparagraph 5 (b) of the Convention. The text of these decisions is reproduced in annex VII to the present report.

240. Also at its twenty-first session, the Committee adopted Views in respect of communications Nos. 88/1997 (Avedes Hamayak Korban v. Sweden), 91/1997 (A. v. the Netherlands), 97/1997 (Orhan Ayas v. Sweden), 100/1997 (J.U.A. v. Switzerland), 101/1997 (Halil Haydin v. Sweden) and 110/1998 (Núñez Chipana v. Venezuela). The texts of the Committee's Views are reproduced in annex VII to the present report.

241. In its Views on communication No. 88/1997 (Avedes Hamayak Korban v. Sweden), the Committee estimated that the State party had an obligation to refrain from forcibly returning the author to Iraq, his country or origin, or to Jordan, in view of the risk he would run of being expelled from that country to Iraq. The Committee came to its conclusion after considering the author's history of detention in Iraq as well as the possibility of his being held responsible for his son's defection from the army. The Committee also considered that the presentation of the facts by the author did not raise significant doubts as to the general veracity of his claims and noted that the State party had not expressed doubts in this respect either.

242. In its Views on communication No. 91/1997 (A. v. The Netherlands), the Committee found that substantial grounds existed for believing that the author would be in danger of being subjected to torture if returned to Tunisia, his country

of origin. The Committee considered that the author could be tortured again in view of his past history of detention and torture, his assistance of an *Al-Nahda* member and his desertion from the Army.

243. In its Views on communication No. 97/1998 (Orhan Ayas v. Sweden), the Committee found that the State party had an obligation to refrain from forcibly returning the author to Turkey or to any other country where he run a real risk of being expelled or returned to Turkey. The Committee considered that, given the human rights situation in Turkey, the author's political affiliation and activities with the Kurdish Workers' Party (PKK), as well as his history of detention and torture constituted substantial grounds for believing that he would be at risk of being arrested and subjected to torture if returned to Turkey.

244. In its Views on communication No. 100/1997 (J.U.A. v. Switzerland), the Committee concluded that the information before it did not show substantial grounds for believing that the author run a personal risk of being tortured if returned to Nigeria and, therefore, no breach of article 3 of the Convention was found. It noted, *inter alia*, that the author had never been arrested or subjected to torture, nor had he claimed that persons in his immediate circle or individuals who participated in the events which motivated his departure from Nigeria were arrested or tortured. Furthermore, it had not been clearly established that the author was being sought by the Nigerian police or that the arrest warrant he had furnished was an authentic document.

245. In its Views on communication No. 101/1997 (Halil Haydin v. Sweden), the Committee found that the State party had an obligation, under article 3 of the Convention, to refrain from forcibly returning the author to Turkey or to any other country where he run a real risk of being expelled or returned to Turkey. The Committee reached that conclusion, *inter alia*, in view of the author's family background, his political activities and affiliation with the PKK, his history of detention and torture and the indications that he was still wanted by the Turkish authorities.

246. In its Views on communication No. 110/1998 (Núñez Chipana v. Venezuela), the Committee found that the State party had failed to fulfil its obligation under article 3 of the Convention not to extradite the author to Peru. It considered that, in view of the nature of the accusations made by the Peruvian authorities in requesting the extradition and the type of evidence on which they had based their request, the author was in a situation where she was in danger of being placed in police custody and tortured on her return to Peru.

247. At its twenty-second session the Committee decided to discontinue the consideration of communications Nos. 33/1995, 68/1997, 69/1997, 70/1997, 71/1997, 72/1997, 73/1997, 74/1997, 75/1997, 76/1997, 77/1997, 78/1997, 79/1997, 80/1997, 81/1997, 82/1997, 87/1997 and 109/1998. It also decided to declare two communications admissible, to be considered on the merits at a subsequent session.

248. Also at its twenty-second session the Committee declared inadmissible communication No. 62/1996 (E.H. v. Hungary) on the basis of article 22, paragraph 2 of the Convention. The text of that decision is reproduced in annex VII to the present report.

249. In the course of its twenty-second session the Committee adopted Views in respect of communications Nos. 103/1998 (A and B v. Sweden), 104/1998 (M.B.B. v. Sweden), 106/1998 (N.P. v. Australia), 112/1998 (H.D. v. Switzerland) and 120/1998 (Sadiq Shek Elmi v. Australia). The text of the Views is reproduced in annex VII to the present report.

250. In its Views on communication No. 103/1998 (A and B v. Sweden), the Committee considered that the authors, nationals of the Islamic Republic of Iran, had not substantiated their claim that they would risk being subjected to torture if they were returned to their country. The Committee therefore concluded that the decision of the State party to return the authors to the Islamic Republic of Iran did not indicate a breach of article 3 of the Convention.

251. With respect to communication No. 104/1998 (M.B.B. v. Sweden), the Committee was of the view that the information before it did not show substantial grounds for believing that the author, who claimed to have been a member of the Iranian Revolutionary Guards and deserted, run a personal risk of being tortured if he was sent back to the Islamic Republic of Iran. The Committee therefore concluded that the decision of the State party to return the author to his country of origin did not indicate a breach of article 3 of the Convention.

252. With respect to communication No. 106/1998 (N.P. v. Australia), the Committee considered that by returning the author to Sri Lanka, his country or origin, the State party would not breach article 3 of the Convention. Although the Committee considered that complete accuracy is seldom to be expected from victims of torture, it noted the important inconsistencies in the author's statements before the Australian authorities. It also noted that the author had not provided the Committee with any arguments, including medical evidence, which could have explained such inconsistencies. In the circumstances the Committee was not persuaded that the author faced a personal and substantial risk of being tortured upon his return to Sri Lanka.

253. In its Views on communication No. 112/1998 (H.D. v. Switzerland), the Committee found that the author had not furnished sufficient evidence to support his fears of being arrested and tortured if he was sent back to Turkey, his country of origin. The Committee therefore concluded that the decision of the State party to return the author to Turkey did not breach article 3 of the Convention.

254. In its Views on communication No. 120/1998 (S.S. Elmi v. Australia), the Committee found that the State party had an obligation, in accordance with article 3 of the Convention, to refrain from forcibly returning the author to Somalia or to any other country where he runs a risk of being expelled or returned to Somalia. In adopting its Views the Committee considered that given the absence of a central government in Somalia and the fact that the warring factions exercise certain prerogatives that are comparable to those normally exercised by legitimate governments, the members of those factions could fall within the phrase "public officials or other persons acting in an official capacity" contained in article 1 of the Convention. The Committee also took into consideration the situation of human rights in Somalia as well as the fact that the author's family belonged to a minority clan and had been particularly targeted in the past by one of the main clans operating in the country.

Chapter VII
Future meetings of the Committee

255. In accordance with rule 2 of its rules of procedure, the Committee shall normally hold two regular sessions each year. Regular sessions of the Committee shall be convened at dates decided by the Committee in consultation with the Secretary-General, taking into account the calendar of conferences as approved by the General Assembly.

256. As the calendar of meetings held within the framework of the United Nations is submitted by the Secretary-General on a biennial basis for the approval of the Committee on Conferences and the General Assembly, the Committee took decisions on the schedule of its meetings to be held in 2000 and 2001.

257. At its 386th meeting on 11 May 1999, the Committee decided to hold its regular sessions for the next biennium at the United Nations Office at Geneva on the following dates:

Twenty-fourth	1-19 May 2000
Twenty-fifth	13-24 November 2000
Twenty-sixth	30 April-18 May 2001
Twenty-seventh	12-23 November 2001

Chapter VIII
Adoption of the annual report of the Committee

258. In accordance with article 24 of the Convention, the Committee shall submit an annual report on its activities to the States parties and to the General Assembly.

259. Since the Committee will hold its second regular session of each calendar year in late November, which coincides with the regular sessions of the General Assembly, the Committee decided to adopt its annual report at the end of its spring session for appropriate transmission to the General Assembly during the same calendar year.

260. Accordingly, at its 390th meeting held on 14 May 1999, the Committee considered the draft report on its activities at its twenty-first and twenty-second sessions (CAT/C/XXIII/CRP.1 and Add.1-8). The report, as amended in the course of the discussion, was adopted by the Committee unanimously. An account of the activities of the Committee at its twenty-third session (8 to 19 November 1999) will be included in the annual report of the Committee for 2000.

Notes

[1] *Official Records of the General Assembly, Forty-fifth Session, Supplement No. 44* (A/45/44), paras. 14-16.

[2] Ibid., *Forty-ninth Session, Supplement No. 44* (A/49/44), paras. 12-13.

Annex I

States that have signed, ratified or acceded to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment as at 14 May 1999

State	*Date of signature*	*Date of receipt of the instrument of ratification or accession*
Afghanistan	4 February 1985	1 April 1987
Albania		11 May 1994[a]
Algeria	26 November 1985	12 September 1989
Antigua and Barbuda		19 July 1993[a]
Argentina	4 February 1985	24 September 1986
Armenia		13 September 1993[a]
Australia	10 December 1985	8 August 1989
Austria	14 March 1985	29 July 1987
Azerbaijan		16 August 1996[a]
Bahrain		6 March 1998[a]
Bangladesh		5 October 1998[a]
Belarus	19 December 1985	13 March 1987
Belgium	4 February 1985	
Belize		17 March 1986[a]
Benin		12 March 1992[a]
Bolivia	4 February 1985	12 April 1999
Bosnia and Herzegovina		6 March 1992[b]
Brazil	23 September 1985	28 September 1989
Bulgaria	10 June 1986	16 December 1986
Burkina Faso		4 January 1999
Burundi		18 February 1993[a]
Cambodia		15 October 1992[a]
Cameroon		19 December 1986[a]
Canada	23 August 1985	24 June 1987
Cape Verde		4 June 1992[a]
Chad		9 June 1995[a]
Chile	23 September 1987	30 September 1988
China	12 December 1986	4 October 1988
Colombia	10 April 1985	8 December 1987
Costa Rica	4 February 1985	11 November 1993
Côte d'Ivoire		18 December 1995[a]
Croatia		8 October 1991[b]
Cuba	27 January 1986	17 May 1995
Cyprus	9 October 1985	18 July 1991
Czech Republic		1 January 1993[b]
Democratic Republic of the Congo		18 March 1996[a]

State	*Date of signature*	*Date of receipt of the instrument of ratification or accession*
Denmark	4 February 1985	27 May 1987
Dominican Republic	4 February 1985	
Ecuador	4 February 1985	30 March 1988
Egypt		25 June 1986[a]
El Salvador		17 June 1996[a]
Estonia		21 October 1991[a]
Ethiopia		14 March 1994[a]
Finland	4 February 1985	30 August 1989
France	4 February 1985	18 February 1986
Gabon	21 January 1986	
Gambia	23 October 1985	
Georgia		26 October 1994[a]
Germany	13 October 1986	1 October 1990
Greece	4 February 1985	6 October 1988
Guatemala		5 January 1990[a]
Guinea	30 May 1986	10 October 1989
Guyana	25 January 1988	19 May 1988
Honduras		5 December 1996[a]
Hungary	28 November 1986	15 April 1987
Iceland	4 February 1985	23 October 1996
India	14 October 1997	
Indonesia	23 October 1985	28 October 1998
Ireland	28 September 1992	
Israel	22 October 1986	3 October 1991
Italy	4 February 1985	12 January 1989
Jordan		13 November 1991[a]
Kazakhstan		26 August 1998[a]
Kenya		21 February 1997[a]
Kuwait		8 March 1996[a]
Kyrgyzstan		5 September 1997[a]
Latvia		14 April 1992[a]
Libyan Arab Jamahiriya		16 May 1989[a]
Liechtenstein	27 June 1985	2 November 1990
Lithuania		1 February 1996[a]
Luxembourg	22 February 1985	29 September 1987
Malawi		11 June 1996[a]
Mali		26 February 1999[a]
Malta		13 September 1990[a]
Mauritius		9 December 1992[a]
Mexico	18 March 1985	23 January 1986
Monaco		6 December 1991[a]

State	*Date of signature*	*Date of receipt of the instrument of ratification or accession*
Morocco	8 January 1986	21 June 1993
Namibia		28 November 1994[a]
Nepal		14 May 1991[a]
Netherlands	4 February 1985	21 December 1988
New Zealand	14 January 1986	10 December 1989
Nicaragua	15 April 1985	
Niger		5 October 1998[a]
Nigeria	28 July 1988	
Norway	4 February 1985	9 July 1986
Panama	22 February 1985	24 August 1987
Paraguay	23 October 1989	12 March 1990
Peru	29 May 1985	7 July 1988
Philippines		18 June 1986[a]
Poland	13 January 1986	26 July 1989
Portugal	4 February 1985	9 February 1989
Republic of Korea		9 January 1995[a]
Republic of Moldova		28 November 1995[a]
Romania		18 December 1990[a]
Russian Federation	10 December 1985	3 March 1987
Saudi Arabia		23 September 1997[a]
Senegal	4 February 1985	21 August 1986
Seychelles		5 May 1992[a]
Sierra Leone	18 March 1985	
Slovakia		29 May 1993[a]
Slovenia		16 July 1993[a]
Somalia		24 January 1990[a]
South Africa	29 January 1993	10 December 1998
Spain	4 February 1985	21 October 1987
Sri Lanka		3 January 1994[a]
Sudan	4 June 1986	
Sweden	4 February 1985	8 January 1986
Switzerland	4 February 1985	2 December 1986
Tajikistan		11 January 1995[a]
The former Yugoslav Republic of Macedonia		12 December 1994[b]
Togo	25 March 1987	18 November 1987
Tunisia	26 August 1987	23 September 1988
Turkey	25 January 1988	2 August 1988
Uganda		3 November 1986[a]
Ukraine	27 February 1986	24 February 1987
United Kingdom of Great Britain and Northern Ireland	15 March 1985	8 December 1988
United States of America	18 April 1988	21 October 1994

State	*Date of signature*	*Date of receipt of the instrument of ratification or accession*
Uruguay	4 February 1985	24 October 1986
Uzbekistan		28 September 1995[a]
Venezuela	15 February 1985	29 July 1991
Yemen		5 November 1991[a]
Yugoslavia	18 April 1989	10 September 1991
Zambia		7 October 1998[a]

[a] Accession.

[b] Succession.

Annex II

States parties that have declared, at the time of ratification or accession, that they do not recognize the competence of the Committee provided for by article 20 of the Convention, as at 14 May 1999[a]

Afghanistan

Bahrain

Belarus

Bulgaria

China

Cuba

Israel

Kuwait

Morocco

Saudi Arabia

Ukraine

Zambia

[a] Total of twelve (12) States parties.

Annex III

States parties that have made the declarations provided for in articles 21 and 22 of the Convention,[a] as at 14 May 1999[b]

State party	*Date of entry into force*
Algeria	12 October 1989
Argentina	26 June 1987
Australia	29 January 1993
Austria	28 August 1987
Bulgaria	12 June 1993
Canada	24 July 1987
Croatia	8 October 1991
Cyprus	8 April 1993
Czech Republic	3 September 1996
Denmark	26 June 1987
Ecuador	29 April 1988
Finland	29 September 1989
France	26 June 1987
Greece	5 November 1988
Hungary	26 June 1987
Iceland	22 November 1996
Italy	11 February 1989
Liechtenstein	2 December 1990
Luxembourg	29 October 1987
Malta	13 October 1990
Monaco	6 January 1992
Netherlands	20 January 1989
New Zealand	9 January 1990
Norway	26 June 1987
Poland	12 June 1993
Portugal	11 March 1989
Russian Federation	1 October 1991
Senegal	16 October 1996
Slovakia	17 April 1995
Slovenia	16 July 1993
South Africa	10 December 1998
Spain	20 November 1987
Sweden	26 June 1987
Switzerland	26 June 1987
Togo	18 December 1987
Tunisia	23 October 1988
Turkey	1 September 1988
Uruguay	26 June 1987
Venezuela	26 April 1994
Yugoslavia	10 October 1991

[a] The United Kingdom of Great Britain and Northern Ireland and the United States of America made only the declarations provided for in article 21 of the Convention.

[b] Total of 40 States parties.

Annex IV

Membership of the Committee against Torture in 1999

Name of member	*Country of nationality*	*Term expires on 31 December*
Mr. Peter Thomas **Burns**	Canada	1999
Mr. Guibril **Camara**	Senegal	1999
Mr. Sayed Kassem **El Masry**	Egypt	2001
Mr. Alejandro **González Poblete**	Chile	1999
Mr. Andreas **Mavrommatis**	Cyprus	1999
Ms. Ada **Polajnar-Pavčnik**	Slovenia	1999
Mr. Antonio **Silva Henriques Gaspar**	Portugal	2001
Mr. Bent **Sørensen**	Denmark	2001
Mr. Alexander M. **Yakovlev**	Russian Federation	2001
Mr. **Yu** Mengjia	China	2001

Annex V

Status of submission of reports by States parties under article 19 of the Convention, as at 14 May 1999

A. Initial reports

Initial reports due in 1988 (27)

State party	Date of entry into force	Initial report date due	Date of submission	Symbol
Afghanistan	26 June 1987	25 June 1988	21 January 1992	CAT/C/5/Add.31
Argentina	26 June 1987	25 June 1988	15 December 1988	CAT/C/5/Add.12/Rev.1
Austria	28 August 1987	27 August 1988	10 November 1988	CAT/C/5/Add.10
Belarus	26 June 1987	25 June 1988	11 January 1989	CAT/C/5/Add.14
Belize	26 June 1987	25 June 1988	18 April 1991	CAT/C/5/Add.25
Bulgaria	26 June 1987	25 June 1988	12 September 1991	CAT/C/5/Add.28
Cameroon	26 June 1987	25 June 1988	15/2/89 & 25/4/91	CAT/C/5/Add.16 & 26
Canada	24 July 1987	23 July 1988	16 January 1989	CAT/C/5/Add.15
Denmark	26 June 1987	25 June 1988	26 July 1988	CAT/C/5/Add.4
Egypt	26 June 1987	25 June 1988	26/7/88 & 20/11/90	CAT/C/5/Add.5 & 23
France	26 June 1987	25 June 1988	30 June 1988	CAT/C/5/Add.2
German Democratic Republic	9 October 1987	8 October 1988	19 December 1988	CAT/C/5/Add.13
Hungary	26 June 1987	25 June 1988	25 October 1988	CAT/C/5/Add.9
Luxembourg	29 October 1987	28 October 1988	15 October 1991	CAT/C/5/Add.29
Mexico	26 June 1987	25 June 1988	10/8/88 & 13/2/90	CAT/C/5/Add.7 & 22
Norway	26 June 1987	25 June 1988	21 July 1988	CAT/C/5/Add.3
Panama	23 September 1987	22 September 1988	28 January 1991	CAT/C/5/Add.24
Philippines	26 June 1987	25 June 1988	26/7/88 & 28/4/89	CAT/C/5/Add.6 & 18
Russian Federation	26 June 1987	25 June 1988	6 December 1988	CAT/C/5/Add.11
Senegal	26 June 1987	25 June 1988	30 October 1989	CAT/C/5/Add.19 (Replacing Add.8)
Spain	20 November 1987	19 November 1988	19 March 1990	CAT/C/5/Add.21
Sweden	26 June 1987	25 June 1988	23 June 1988	CAT/C/5/Add.1
Switzerland	26 June 1987	25 June 1988	14 April 1989	CAT/C/5/Add.17
Togo	18 December 1987	17 December 1988		
Uganda	26 June 1987	25 June 1988		
Ukraine	26 June 1987	25 June 1988	17 January 1990	CAT/C/5/Add.20
Uruguay	26 June 1987	25 June 1988	6/6/91 & 5/12/91	CAT/C/5/Add.27 & 30

Initial reports due in 1989 (10)

State party	Date of entry into force	Initial report date due	Date of submission	Symbol
Chile	30 October 1988	29 October 1989	21/9/89 & 5/11/90	CAT/C/7/Add.2 & 9
China	3 November 1988	2 November 1989	1 December 1989	CAT/C/7/Add.5 & 14
Colombia	7 January 1988	6 January 1989	24/4/89 & 28/8/90	CAT/C/7/Add.1 & 10
Czech and Slovak Federal Republic	6 August 1988	5 August 1989	21/11/89 & 14/5/91	CAT/C/7/Add.4 & 12
Ecuador	29 April 1988	28 April 1989	27/6/90 & 28/2/91 & 26/9/91	CAT/C/7/Add.7 & 11 & 13
Greece	5 November 1988	4 November 1989	8 August 1990	CAT/C/7/Add.8
Guyana	18 June 1988	17 June 1989		
Peru	6 August 1988	5 August 1989	9/11/92 & 22/2/94	CAT/C/7/Add.15 & 16
Tunisia	23 October 1988	22 October 1989	25 October 1989	CAT/C/7/Add.3
Turkey	1 September 1988	31 August 1989	24 April 1990	CAT/C/7/Add.6

Initial reports due in 1990 (11)

State party	Date of entry into force	Initial report date due	Date of submission	Symbol
Algeria	12 October 1989	11 October 1990	13 February 1991	CAT/C/9/Add.5
Australia	7 September 1989	6 September 1990	27/8/91-11/6/92	CAT/C/9/Add.8 & 11
Brazil	28 October 1989	27 October 1990		
Finland	29 September 1989	28 September 1990	28 September 1990	CAT/C/9/Add.4
Guinea	9 November 1989	8 November 1990		
Italy	11 February 1989	10 February 1990	30 December 1991	CAT/C/9/Add.9

State party	Date of entry into force	Initial report date due	Date of submission	Symbol
Libyan Arab Jamahiriya	15 June 1989	14 June 1990	14/5/91-27/8/92	CAT/C/9/Add.7 & 12/Rev.1
Netherlands	20 January 1989	19 January 1990	14/3-11/9-13/9/90	CAT/C/9/Add.1-3
Poland	25 August 1989	24 August 1990	22 March 1993	CAT/C/9/Add.13
Portugal	11 March 1989	10 March 1990	7 May 1993	CAT/C/9/Add.15
United Kingdom of Great Britain and Northern Ireland	7 January 1989	6 January 1990	22/3/91-30/4/92	CAT/C/9/Add.6,10 & 14

Initial reports due in 1991 (7)

State party	Date of entry into force	Initial report date due	Date of submission	Symbol
Germany	31 October 1990	30 October 1991	9 March 1992	CAT/C/12/Add.1
Guatemala	4 February 1990	3 February 1991	2/11/94 & 31/7/95	CAT/C/12/Add.5 & 6
Liechtenstein	2 December 1990	1 December 1991	5 August 1994	CAT/C/12/Add.4
Malta	13 October 1990	12 October 1991	3 January 1996	CAT/C/12/Add.7
New Zealand	9 January 1990	8 January 1991	29 July 1992	CAT/C/12/Add.2
Paraguay	11 April 1990	10 April 1991	13 January 1993	CAT/C/12/Add.3
Somalia	23 February 1990	22 February 1991		

Initial reports due in 1992 (10)

State party	Date of entry into force	Initial report date due	Date of submission	Symbol
Croatia	8 October 1991	7 October 1992	4 January 1996	CAT/C/16/Add.6
Cyprus	17 August 1991	16 August 1992	23 June 1993	CAT/C/16/Add.2
Estonia	20 November 1991	19 November 1992		
Israel	2 November 1991	1 November 1992	25 January 1994	CAT/C/16/Add.4
Jordan	13 December 1991	12 December 1992	23 November 1994	CAT/C/16/Add.5
Nepal	13 June 1991	12 June 1992	6 October 1993	CAT/C/16/Add.3
Romania	17 January 1991	16 January 1992	14 February 1992	CAT/C/16/Add.1
Venezuela	28 August 1991	27 August 1992	8 July 1998	CAT/C/16/Add.8
Yemen	5 December 1991	4 December 1992		
Yugoslavia	10 October 1991	9 October 1992	20 January 1998	CAT/C/16/Add.7

Initial reports due in 1993 (8)

State party	Date of entry into force	Initial report date due	Date of submission	Symbol
Benin	11 April 1992	10 April 1993		
Bosnia and Herzegovina	6 March 1992	5 March 1993		
Cambodia	14 November 1992	13 November 1993		
Cape Verde	4 July 1992	3 July 1993		
Czech Republic	1 January 1993	31 December 1993	18 April 1994	CAT/C/21/Add.2
Latvia	14 May 1992	13 May 1993		
Monaco	5 January 1992	4 January 1993	14 March 1994	CAT/C/21/Add.1
Seychelles	4 June 1992	3 June 1993		

Initial reports due in 1994 (8)

State party	Date of entry into force	Initial report date due	Date of submission	Symbol
Antigua and Barbuda	18 August 1993	17 August 1994		
Armenia	13 October 1993	12 October 1994	20/4/95 & 21/12/95	CAT/C/24/Add.4 & Rev.1
Burundi	20 March 1993	19 March 1994		
Costa Rica	11 December 1993	10 December 1994		
Mauritius	8 January 1993	7 January 1994	10/5/94-1/3/95	CAT/C/24/Add.1 & 3
Morocco	21 July 1993	20 July 1994	29 July 1994	CAT/C/24/Add.2
Slovakia	28 May 1993	27 May 1994		
Slovenia	15 August 1993	14 August 1994		

Initial reports due in 1995 (7)

State party	Date of entry into force	Initial report date due	Date of submission	Symbol
Albania	10 June 1994	9 June 1995		
Ethiopia	13 April 1994	12 April 1995		
Georgia	25 November 1994	24 November 1995	4 June 1996	CAT/C/28/Add.1
Namibia	28 December 1994	27 December 1995	23 August 1996	CAT/C/28/Add.2
Sri Lanka	2 February 1994	1 February 1995	27 October 1997	CAT/C/28/Add.3
The former Yugoslav Rep. of Macedonia	12 December 1994	11 December 1995	22 May 1998	CAT/C/28/Add.4
United States of America	20 November 1994	19 November 1995		

Initial reports due in 1996 (5)

State party	Date of entry into force	Initial report date due	Date of submission	Symbol
Chad	9 July 1995	8 July 1996		
Cuba	16 June 1995	15 June 1996	15 November 1996	CAT/C/32/Add.2
Republic of Korea	8 February 1995	7 February 1996	10 February 1996	CAT/C/32/Add.1
Republic of Moldova	28 December 1995	27 December 1996		
Uzbekistan	28 October 1995	27 October 1996	18 February 1999	CAT/C/32/Add.3

Initial reports due in 1997 (8)

State party	Date of entry into force	Initial report date due	Date of submission	Symbol
Azerbaijan	15 September 1996	14 September 1997	18 December 1998	CAT/C/37/Add.3
Côte d'Ivoire	17 January 1996	16 January 1997		
Democratic Republic of the Congo	17 April 1996	16 April 1997		
El Salvador	17 July 1996	16 July 1997		
Iceland	22 November 1996	21 November 1997	12 February 1998	CAT/C/37/Add.2
Kuwait	7 April 1996	6 April 1997	5 August 1997	CAT/C/37/Add.1
Lithuania	2 March 1996	1 March 1997		
Malawi	11 July 1996	10 July 1997		

Initial reports due in 1998 (4)

State party	Date of entry into force	Initial report date due	Date of submission	Symbol
Honduras	4 January 1997	3 January 1998		
Kenya	23 March 1997	22 March 1998		
Kyrgyzstan	5 October 1997	4 October 1998	9 February 1999	CAT/C/42/Add.1
Saudi Arabia	22 October 1997	21 October 1998		

Initial reports due in 1999 (6)

State party	Date of entry into force	Initial report date due	Date of submission	Symbol
Bahrain	5 April 1998	4 April 1999		
Bangladesh	4 November 1998	3 November 1999		
Indonesia	27 November 1998	26 November 1999		
Kazakhstan	25 September 1998	24 September 1999		
Niger	4 November 1998	3 November 1999		
Zambia	6 November 1998	5 November 1999		

B. Second periodic reports

Second periodic reports due in 1992 (26)

State party	*Second periodic report date due*	*Date of submission*	*Symbol*
Afghanistan	25 June 1992		
Argentina	25 June 1992	29 June 1992	CAT/C/17/Add.2
Austria	27 August 1992	12 October 1998	CAT/C/17/Add.21
Belarus	25 June 1992	15 September 1992	CAT/C/17/Add.6
Belize	25 June 1992		
Bulgaria	25 June 1992	19 June 1998	CAT/C/17/Add.19
Cameroon	25 June 1992		
Canada	23 July 1992	11 September 1992	CAT/C/17/Add.5
Denmark	25 June 1992	22 February 1995	CAT/C/17/Add.13
Egypt	25 June 1992	13 April 1993	CAT/C/17/Add.11
France	25 June 1992	19 December 1996	CAT/C/17/Add.18
Hungary	25 June 1992	23 September 1992	CAT/C/17/Add.8
Luxembourg	28 October 1992	3 August 1998	CAT/C/17/Add.20
Mexico	25 June 1992	21 July 1992 and 28 May 1996	CAT/C/17/Add.3 and Add.17
Norway	25 June 1992	25 June 1992	CAT/C/17/Add.1
Panama	22 September 1992	21 September 1992	CAT/C/17/Add.7
Philippines	25 June 1992		
Russian Federation	25 June 1992	17 January 1996	CAT/C/17/Add.15
Senegal	25 June 1992	27 March 1995	CAT/C/17/Add.14
Spain	19 November 1992	19 November 1992	CAT/C/17/Add.10
Sweden	25 June 1992	30 September 1992	CAT/C/17/Add.9
Switzerland	25 June 1992	28 September 1993	CAT/C/17/Add.12
Togo	17 December 1992		
Uganda	25 June 1992		
Ukraine	25 June 1992	31 August 1992	CAT/C/17/Add.4
Uruguay	25 June 1992	25 March 1996	CAT/C/17/Add.16

Second periodic reports due in 1993 (9)

State party	*Second periodic report date due*	*Date of submission*	*Symbol*
Chile	29 October 1993	16 February 1994	CAT/C/20/Add.3
China	2 November 1993	2 December 1995	CAT/C/20/Add.5
Colombia	6 January 1993	4 August 1995	CAT/C/20/Add.4
Ecuador	28 April 1993	21 April 1993	CAT/C/20/Add.1
Greece	4 November 1993	6 December 1993	CAT/C/20/Add.2
Guyana	17 June 1993		
Peru	5 August 1993	20 January 1997	CAT/C/20/Add.6
Tunisia	22 October 1993	10 November 1997	CAT/C/20/Add.7
Turkey	31 August 1993		

Second periodic reports due in 1994 (11)

State party	*Second periodic report date due*	*Date of submission*	*Symbol*
Algeria	11 October 1994	23 February 1996	CAT/C/25/Add 8
Australia	6 September 1994		
Brazil	27 October 1994		
Finland	28 September 1994	11 September 1995	CAT/C/25/Add 7
Guinea	8 November 1994		
Italy	10 February 1994	20 July 1994	CAT/C/25/Add 4
Libyan Arab Jamahiriya	14 June 1994	30 June 1994	CAT/C/25/Add 3
Netherlands	19 January 1994	14 April 1994 and 16 June 1994 and 27 March 1995	CAT/C/25/Add 1, 2 and 5
Poland	24 August 1994	7 May 1996	CAT/C/25/Add 9
Portugal	10 March 1994	7 November 1996	CAT/C/25/Add 10
United Kingdom of Great Britain and Northern Ireland	6 January 1994	25 March 1995	CAT/C/25/Add 6

Second periodic reports due in 1995 (7)

State party	*Second periodic report date due*	*Date of submission*	*Symbol*
Germany	30 October 1995	17 December 1996	CAT/C/29/Add 2
Guatemala	3 February 1995	13 February 1997	CAT/C/29/Add 3
Liechtenstein	1 December 1995	3 September 1998	CAT/C/29/Add 5
Malta	12 October 1995	29 September 1998	CAT/C/29/Add 6
New Zealand	8 January 1995	25 February 1997	CAT/C/29/Add 4
Paraguay	10 April 1995	10 July 1996	CAT/C/29/Add 1
Somalia	22 February 1995		

Second periodic reports due in 1996 (10)

State party	*Second periodic report date due*	*Date of submission*	*Symbol*
Croatia	7 October 1996	5 March 1998	CAT/C/33/Add 4
Cyprus	16 August 1996	12 September 1996	CAT/C/33/Add 1
Estonia	19 November 1996		
Israel	1 November 1996	6 December 1996 and 7 February 1997	CAT/C/33/Add 2/Rev 1
		26 February 1998 (special report)	CAT/C/33/Add 3
Jordan	12 December 1996		
Nepal	12 June 1996		
Romania	16 January 1996		
Venezuela	27 August 1996		
Yemen	4 December 1996		
Yugoslavia	9 October 1996		

Second periodic reports due in 1997 (8)

State party	*Second periodic report date due*	*Date of submission*	*Symbol*
Benin	10 April 1997		
Bosnia and Herzegovina	5 March 1997		
Cambodia	13 November 1997		
Cape Verde	3 July 1997		
Czech Republic	31 December 1997		
Latvia	13 May 1997		
Monaco	4 January 1997		
Seychelles	3 June 1997		

Second periodic reports due in 1998 (8)

State party	*Second periodic report date due*	*Date of submission*	*Symbol*
Antigua and Barbuda	17 August 1998		
Armenia	12 October 1998		
Burundi	19 March 1998		
Costa Rica	10 December 1998		
Mauritius	7 January 1998	8 June 1998	CAT/C/43/Add 1
Morocco	20 July 1998	2 September 1998	CAT/C/43/Add 2
Slovakia	27 May 1998		
Slovenia	14 August 1998		

Second periodic reports due in 1999 (7)

State party	*Second periodic report date due*	*Date of submission*	*Symbol*
Albania	9 June 1999		
Ethiopia	12 April 1999		
Georgia	24 November 1999		
Namibia	27 December 1999		
Sri Lanka	1 February 1999		
The former Yugoslav Republic of Macedonia	11 December 1999		
United States of America	19 November 1999		

C. Third periodic reports

Third periodic reports due in 1996 (26)

State party	*Third periodic report date due*	*Date of submission*	*Symbol*
Afghanistan	25 June 1996		
Argentina	25 June 1996	26 September 1996	CAT/C/34/Add.5
Austria	27 August 1996		
Belarus	25 June 1996		
Belize	25 June 1996		
Bulgaria	25 June 1996		
Cameroon	25 June 1996		
Canada	23 July 1996		
Denmark	25 June 1996	5 July 1996	CAT/C/34/Add.3
Egypt	25 June 1996	30 October 1998	CAT/C/34/Add.11
France	25 June 1996		
Hungary	25 June 1996		
Luxembourg	28 October 1996		CAT/C/34/Add.10
Mexico	25 June 1996	25 June 1996	CAT/C/34/Add.2
Norway	25 June 1996	6 February 1997	CAT/C/34/Add.8
Panama	22 September 1996	19 May 1997	CAT/C/34/Add.9
Philippines	25 June 1996		
Russian Federation	25 June 1996		
Senegal	25 June 1996		
Spain	19 November 1996	18 November 1996	CAT/C/34/Add.7
Sweden	25 June 1996	23 August 1996	CAT/C/34/Add.4
Switzerland	25 June 1996	7 November 1996	CAT/C/34/Add.6
Togo	17 December 1996		
Uganda	25 June 1996		
Ukraine	25 June 1996	19 June 1996	CAT/C/34/Add.1
Uruguay	25 June 1996		

Third periodic reports due in 1997 (9)

State party	*Third periodic report date due*	*Date of submission*	*Symbol*
Chile	29 October 1997		
China	2 November 1997	5 May 1999	CAT/C/39/Add.2
Colombia	6 January 1997		
Ecuador	28 April 1997		
Greece	4 November 1997		
Guyana	17 June 1997		
Peru	5 August 1997	12 December 1998	CAT/C/39/Add.1
Tunisia	22 October 1997		
Turkey	31 August 1997		

Third periodic reports due in 1998 (11)

State party	*Third periodic report date due*	*Date of submission*	*Symbol*
Algeria	11 October 1998		
Australia	6 September 1998		
Brazil	27 October 1998		
Finland	28 September 1998	16 November 1998	CAT/C/44/Add.6
Guinea	8 November 1998		
Italy	10 February 1998	22 July 1998	CAT/C/44/Add.2
Libyan Arab Jamahiriya	14 June 1998	2 September 1998	CAT/C/44/Add.3
Netherlands	19 January 1998	3 September 1998	CAT/C/44/Add.4
Poland	24 August 1998	11 November 1998	CAT/C/44/Add.5
Portugal	10 March 1998	2 February 1999	CAT/C/44/Add.7
United Kingdom of Great Britain and Northern Ireland	6 January 1998	2 April 1998	CAT/C/44/Add.1

Third periodic reports due in 1999 (7)

State party	*Third periodic report date due*	*Date of submission*	*Symbol*
Germany	30 October 1999		
Guatemala	3 February 1999		
Liechtenstein	1 December 1999		
Malta	12 October 1999		
New Zealand	8 January 1999		
Paraguay	10 April 1999		
Somalia	22 February 1999		

Annex VI

Country rapporteurs and alternate rapporteurs for the reports of States parties considered by the Committee at its twenty-first and twenty-second sessions

A. Twenty-first session

Report	*Rapporteur*	*Alternate*
Tunisia second periodic report (CAT/C/20/Add.7)	**El Masry**	**Camara**
Yugoslavia initial report (CAT/C/16/Add.7)	**Yakovlev**	**Zupančič**
Iceland initial report (CAT/C/37/Add.2)	**Sørensen**	**Mavrommatis**
Croatia second periodic report (CAT/C/33/Add.4)	**Silva Henriques Gaspar**	**Zupančič**
United Kingdom third periodic report (CAT/C/44/Add.1)	**Burns**	**Sørensen**
Hungary third periodic report (CAT/C/34/Add.10)	**Mavrommatis**	**Yu**

B. Twenty-second session

Report	*Rapporteur*	*Alternate*
The former Yugoslav Republic of Macedonia initial report (CAT/C/28/Add.4)	**Yakovlev**	**Burns**
Mauritius second periodic report (CAT/C/43/Add.1)	**Mavrommatis**	**El Masry**
Venezuela initial report (CAT/C/16/Add.8)	**González Poblete**	**Silva Henriques Gaspar**
Bulgaria second periodic report (CAT/C/17/Add.19)	**Sørensen**	**Yakovlev**
Italy third periodic report (CAT/C/44/Add.2)	**El Masry**	**Burns**
Luxembourg second periodic report (CAT/C/44/Add.20)	**Silva Henriques Gaspar**	**Camara**
Libyan Arab Jamahiriya third periodic report (CAT/C/44/Add.3)	**Sørensen**	**Yu**

Report	*Rapporteur*	*Alternate*
Morocco: second periodic report (CAT/C/43/Add.2)	**Camara**	**Silva Henriques Gaspar**
Egypt: third periodic report (CAT/C/34/Add.11)	**Burns**	**Mavrommatis**
Liechtenstein: second periodic report (CAT/C/29/Add.5)	**Burns**	**Yu**

Annex VII

Views and decisions of the Committee against Torture under article 22 of the Convention

A. Views

1. Communication No. 88/1997

Submitted by: Avedes Hamayak Korban
[represented by counsel]

Alleged victim: The author

State party: Sweden

Date of communication: June 1997

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 16 November 1998,

Having concluded its consideration of communication No. 88/1997, submitted to the Committee against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the author of the communication, her counsel and the State party,

Adopts its Views under article 22, paragraph 7, of the Convention.

1. The author of the communication is Mr. Avedes Hamayak Korban, an Iraqi citizen born in 1940, currently residing in Sweden where he is seeking asylum. He claims that his forced return to Iraq would constitute a violation by Sweden of article 3 of the Convention against Torture. He is represented by counsel.

Facts as presented by the author

2.1 The author was a resident of Kuwait since October 1967. He states that, because of his opposition to the Iraqi regime, he stayed in Kuwait as a refugee after the Gulf war. However, because of his nationality, he was imprisoned on three occasions, tortured, in particular through electric shocks, and finally deported to Iraq on 22 September 1991. Upon arrival at the border he was arrested and transferred to Baghdad, where he was interrogated at the headquarters of the Iraqi intelligence services. Later on he was released on bail and ordered to report daily to the government representative in his neighbourhood, as he was suspected of being an informer for the Kuwaiti authorities on the grounds that he did not leave Kuwait when the Iraqi army withdrew. He states that he managed to leave the country with his family through bribes and arrived in Jordan, his wife's country of nationality.

2.2 In Jordan he was refused a residence permit in November 1991 and was only given a six-month temporary visa. When that visa expired he had to pay one dinar for each day he remained in the country. He states that he tried unsuccessfully to obtain permanent residence. In 1993 he went back to Iraq to visit his dying mother and was first kept in detention for 14 days and then under house arrest, having to report to the government representative every day. According to the author, this representative advised him to leave Iraq since his safety in the country was at risk. He went back to Jordan where he remained, without a residence permit, until June 1994. He arrived in Sweden via Turkey on 13 June

1994. His son lives in Sweden where he obtained a permanent residence permit after having deserted from Iraqi military service during the Gulf war. The author alleges that, according to Iraqi law, he is considered responsible for his son's defection, and for that reason as well his situation in Iraq would be difficult. The author's wife and daughters are apparently still living in Jordan.

2.3 On 26 September 1994 the Swedish Immigration Board decided to reject the author's application for a residence permit and ordered his expulsion to Jordan. The Board found that the author's connections with Jordan constituted substantial grounds to assume that he would be received in that country and that there was no danger for him to be sent from Jordan to Iraq. The Aliens Appeals Board, sharing the opinion of the Swedish Immigration Board, dismissed the author's appeal on 11 September 1996. In 1997 the author lodged three new applications which were all rejected by the Aliens Appeals Board.

Complaint

3.1 The author claims that his return to Iraq would constitute a violation of article 3 of the Convention against Torture by Sweden, since there are risks that he would be arrested and subjected to torture in that country. He also claims that, not having a residence permit in Jordan, it is unsafe for him to return to that country from which he fears to be sent back to Iraq since the Jordan police work closely with the Iraqi authorities.

3.2 In support of his claim the author provides the Committee with copies of two letters dated 20 December 1994 and 17 October 1996 in which the Office of the United Nations High Commissioner for Refugees (UNHCR) informed the Swedish Aliens Appeals Board that foreigners married to Jordanian women did not enjoy any preferential treatment when applying for residence permits in Jordan and that marriage to a Jordanian citizen was not grounds for being granted residency in Jordan; special authorization had to be obtained from the Ministry of Interior. He also provided copy of a letter dated 27 March 1997 in which UNHCR informed the Advice Bureau for Asylum Seekers and Refugees in Stockholm about cases of Iraqis denied entry or readmission into Jordan upon being returned from Sweden and Denmark.

State party's observations

4.1 On 16 September 1997 the Committee, acting through its Special Rapporteur for new communications, transmitted the communication to the State party for comments and requested the State party not to expel or deport the author to Jordan or Iraq while his communication was under consideration by the Committee.

4.2 In its submission to the Committee the State party indicates that the author applied from Jordan for a visa to Sweden in September 1993 and that in his application he stated that he had permission to stay in Jordan. The application was rejected by the Swedish Immigration Board on 14 December 1993. He then entered Sweden on 13 June 1994 and applied for asylum on the following day, claiming that he did not dare to stay in Jordan as he feared that, due to the presence of the Iraqi security police in that country, he might be sent back to Iraq where he risked being persecuted.

4.3 The Swedish Immigration Board and the Aliens Appeals Board dismissed his applications and ordered his expulsion to Jordan. However, following the Committee's request not to expel the author to Iraq or Jordan while his communication was under consideration by the Committee, the Swedish Immigration Board decided on 24 September 1997 to stay the enforcement of its decision until further notice, pending the Committee's final decision in the matter.

4.4 With respect to the admissibility of the communication, the State party submits that the author can at any time lodge a new application for re-examination of the case, provided that new circumstances are adduced that could call for a different decision. However, it does not raise any objection to the admissibility.

4.5 As for the merits, the State party contends that, in determining whether the forced return of the author would constitute a breach of article 3 of the Convention, the following issues should be examined: (a) the general situation of human rights in Jordan and Iraq; (b) the general situation of Iraqi refugees in Jordan; and (c) the author's personal risk of being subjected to torture in Jordan or after having being deported from Jordan to Iraq.

4.6 Regarding the general situation of human rights in Jordan, the State party finds no grounds for asserting that there exists in Jordan a consistent pattern of gross, flagrant or mass violations of human rights. Such pattern, however, seems to exist in Iraq. In view of that, Iraqi nationals are normally not expelled from Sweden to their country of origin, unless the immigration authorities find that there are objections to their presence in Sweden from the point of view of security.

4.7 As for the general situation of Iraqi refugees in Jordan, the State party refers to two letters submitted to the Aliens Appeals Board on 28 October 1996 and 22 September 1997 respectively, in which Amnesty International expresses concern for the security of Iraqi nationals who are returned from Sweden to Jordan. According to Amnesty, Iraqi citizens are usually granted a temporary residence permit of up to six months and after that they have to pay a daily fee to be able to stay in Jordan. Those who cannot pay the fee or who are found without a valid passport are put in custody while awaiting deportation. There are several cases known to Amnesty International of Iraqis being detained and tortured in Iraq after deportation from Jordan.

4.8 The State party also refers to the contents of the above-mentioned letter of 27 March 1997 from UNHCR to the Advice Bureau for Asylum Seekers and Refugees. In addition, it mentions the latest annual report on Jordan of the United States Department of State, according to which since 1991 thousands of Iraqis have sought asylum in Jordan, where they have been given assistance by UNHCR. The report mentions, however, two cases of forced expulsion of Iraqis to Iraq in 1997.

4.9 According to information received through diplomatic channels by the State party, although Jordan has not ratified the 1951 Convention relating to the Status of Refugees it has expressed its willingness to follow the principles contained in that Convention and the Jordanian authorities seem to have a particular understanding for the difficult situation of the Iraqis. In spite of that, Iraqis who return from Europe are not welcome. Even though the Jordanian authorities claim that Iraqis are only sent back to Iraq with their voluntary written approval, it cannot be ruled out that some Iraqis have been sent to Iraq against their will. Although Jordan can be characterized as a rather safe country for Iraqi refugees, their situation may change from time to time depending on the political situation. The relations between Jordan and Iraq have recently been "normalized", and this may affect the situation of Iraqi refugees. According to UNHCR, if an Iraqi is returned to Jordan after expulsion from Sweden and it is known to the Jordanian authorities that he has been staying in Sweden, he will probably be expelled also from Jordan. Most member States of the European Union do not seem to regard Jordan as a safe third country for Iraqi citizens.

4.10 The State party indicates that the information referred to in the previous paragraph was not available to the Swedish Immigration Board and the Aliens Appeals Board when they made their decisions concerning the author's application for asylum. It can be inferred from it, however, that Iraqi refugees in Jordan, in particular those who have been returned to Jordan from a European country, are not entirely protected from being deported to Iraq.

4.11 With regard to the personal risk of being subjected to torture, the State party notes that the author has not expressed any fear with respect to Jordan. As for Iraq, in view of the human rights situation in that country and taking into consideration, *inter alia*, the escape of the author's son from military service and the treatment that the author allegedly received from the Iraqi police during his stays in Iraq after leaving Kuwait, it can be said that substantial grounds exist for believing that, if returned to Iraq, the author would be in danger of being subjected to torture. The question that remains to be considered is whether the author would run a real risk of being deported to Iraq from Jordan. The State party abstains from making an evaluation of its own.

4.12 In a further submission dated 6 November 1998 the State party stated that Jordan and UNHCR had recently agreed on a Memorandum of Understanding regarding the rights of refugees in Jordan. The Memorandum contains the same definition of refugee as appears in article 1 of the 1951 Geneva Convention, confirming the principle of non-refoulement regarding citizens of a third country who have been recognized as refugees by UNHCR. Thus, the Memorandum is an additional sign of Jordan's willingness to follow the principles contained in the Geneva Convention. There are also other signs of increasing cooperation between Jordanian authorities and UNHCR and of a wider understanding for the situation of Iraqi refugees.

Counsel's comments

5.1 In her comments to the State party's submission counsel stresses that the author's last application for asylum was rejected on 28 August 1997. By then, the Swedish authorities had enough reliable information at their disposal to consider that Jordan would not be a safe country for the author, since he would be at risk of being deported to Iraq and subjected to torture in that country.

5.2 With respect to the observations made by the State party on 6 November 1998 counsel submits copy of a letter from the UNHCR dated 11 November 1998 in which she is informed that although UNHCR considers the signature of the Memorandum of Understanding as a very positive development it does not alter UNHCR's view that Jordan is not a safe country of asylum for Iraqi nationals. First, the Memorandum retains an important time limitation. According to its article 5 a refugee should receive legal status and UNHCR would endeavour to find recognized refugees a durable solution be it repatriation to the country of origin or resettlement in a third country. The sojourn of recognized refugees should not exceed six months. Secondly, the Jordanian authorities do not apply the Memorandum to deportees from third countries. Their practice with regard to Iraqi nationals deported back to Jordan from third countries is either to allow their departure to Iraq or to allow them to travel to any third country of their choice, including the country of deportation.

Issues and proceedings before the Committee

6.1 Before considering any claims contained in a communication, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement. The Committee also notes that all domestic remedies have been exhausted and finds that no further obstacles to the admissibility of the communication exist. Since both the State party and the author's counsel have provided observations on the merits of the communication, the Committee proceeds with the consideration of those merits.

6.2 The issue before the Committee is whether the forced return of the author to Iraq or Jordan would violate the obligation of Sweden under article 3 of the Convention not to expel or to return a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

6.3 The Committee must decide, pursuant to paragraph 1 of article 3, whether there are substantial grounds for believing that the author would be in danger of being subjected to torture upon return to Iraq. In reaching this decision, the Committee must take into account all relevant considerations, pursuant to paragraph 2 of article 3, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. The aim of the determination, however, is to establish whether the individual concerned would be personally at risk of being subjected to torture in the country to which he or she would return. The existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute a sufficient ground for determining that a particular person would be in danger of being subjected to torture upon his return to that country; specific grounds must exist indicating that the individual concerned would be personally at risk. Similarly, the absence of a consistent pattern of gross violations of human rights does not mean that a person cannot be considered to be in danger of being subjected to torture in his or her specific circumstances.

6.4 The Committee is aware of the serious human rights situation in Iraq and considers that the author's history of detention in that country as well as the possibility of his being held responsible for his son's defection from the army should be taken into account when determining whether he would be in danger of being subjected to torture upon his return. The Committee also considers that the presentation of the facts by the author do not raise significant doubts as to the general veracity of his claims and notes that the State party has not expressed doubts in this respect either. In the circumstances, the Committee considers that substantial grounds exist for believing that the author would be in danger of being subjected to torture if returned to Iraq.

6.5 The Committee notes that the Swedish immigration authorities had ordered the author's expulsion to Jordan and that the State party abstains from making an evaluation of the risk that the author will be deported to Iraq from Jordan. It appears from the parties' submissions, however, that such risk cannot be excluded, in view of the assessment made by different sources, including UNHCR, based on reports indicating that some Iraqis have been sent by the Jordanian authorities to Iraq against their will, that marriage to a Jordanian woman does not guarantee a residence permit in Jordan and that this situation has not improved after the signature of a Memorandum of Understanding between the UNHCR and the Jordanian authorities regarding the rights of refugees in Jordan. The State party itself has recognized that Iraqi citizens who are refugees in Jordan, in particular those who have been returned to Jordan from a European country, are not entirely protected from being deported to Iraq.

7. In the light of the above, the Committee is of the view that, in the prevailing circumstances, the State party has an obligation to refrain from forcibly returning the author to Iraq. It also has an obligation to refrain from forcibly returning the author to Jordan, in view of the risk he would run of being expelled from that country to Iraq. In this respect the Committee refers to paragraph 2 of its general comment on the implementation of article 3 of the Convention in the context of article 22, according to which "the phrase 'another State' in article 3 refers to the State to which the individual concerned is being expelled, returned or extradited, as well as to any State to which the author may subsequently be expelled, returned or extradited". Furthermore, the Committee notes that although Jordan

is a party to the Convention, it has not made the declaration under article 22. As a result, the author would not have the possibility of submitting a new communication to the Committee if he was threatened with deportation from Jordan to Iraq.

[Done in English, French, Russian and Spanish, the English text being the original version.]

2. Communication No. 91/1997

Submitted by: A. (name withheld)
[represented by counsel]

Alleged victim: The author

State party: The Netherlands

Date of communication: 23 October 1997

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 13 November 1998,

Having concluded its consideration of communication No. 88/1997, submitted to the Committee against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the author of the communication, her counsel and the State party,

Adopts its Views under article 22, paragraph 7, of the Convention.

1. The author of the communication is A., a Tunisian citizen born in 1972, currently residing in the Netherlands, where he is seeking asylum. He claims that his forced return to Tunisia would constitute a violation by the Netherlands of article 3 of the Convention against Torture. He is represented by counsel.

Facts as presented by the author

2.1 Author reports that he has had problems with the Tunisian authorities since he was a student because he used to criticize the Government at school. Because of that and an argument he had with his headmaster about a private issue he was dismissed from school in 1988. In July 1989 he travelled to France with a temporary visa and worked there illegally. He had the intention to study in France but after eight months was caught and sent back to Tunisia. Three months later he travelled again to France but he was again caught 13 days after his arrival and sent back.

2.2 After his return to Tunisia the author started private lessons with a teacher who happened to be a prominent member of the illegal *Al-Nahda* movement although he never told him that. On several occasions he was picked up by the police and held for a few days during which he was interrogated about his teacher and beaten. At a certain point an arrest warrant was issued against the teacher, who asked the author for help in leaving the country. The author knew the border region well because his family came from that part of the country. That is why he was able to help the teacher cross the border. In May 1992 the author was arrested. For two weeks he was beaten daily and held in a sort of chicken coop at the police station. That treatment left him with scars on his back and three broken toes. At the end of those two weeks he was sent for military service which he had not yet performed despite having been called up in 1991. As a punishment he was sent to Ghafsa, an army centre in the desert, where he was again subjected to ill-treatment, such as being kept for

several days in an underground cell. In August 1992 he managed to escape and left the country immediately through a small border post.

2.3 The author stayed in Algeria for a day and a half and then spent a month and a half in Morocco, where he destroyed his passport. He then went to Ceuta where he stayed for a month and a half and to the Spanish mainland, where he stayed until December 1993. Then he went to Paris where he stayed until March 1994. All these stays were illegal. He arrived in the Netherlands on 21 March 1994 where he asked for asylum and stated that he was an Iraqi national. On 20 September 1994, during an interview with immigration officials, he told them that his name was A. and that he had Algerian nationality. On 14 December 1995 the Secretary of Justice rejected his refugee claim and on 19 June 1996 his appeal was turned down by the President of the Regional Court in Amsterdam. On 15 July 1996, his application for review of the decision of 14 December 1995 was rejected. On 17 January 1997, his appeal against the rejection was dismissed by the President of the Regional Court in Amsterdam.

2.4 On 10 February 1997, the author was arrested by the police in Haarlem during an inspection of the company where he worked. This time he informed the police that he was of Tunisian nationality, but refused to give his real name unless he was given assurances that he would not be sent back to Tunisia. While in detention he filed another request for asylum that was rejected by the Secretary of Justice on 28 February 1997. On 5 March 1997 the author appealed this decision to the President of the Regional Court in Hertogenbosch. The appeal was turned down on 22 October 1997 and the expulsion was planned for 25 October 1997.

Complaint

3.1 Counsel states that the hearing into the author's claim before the court on 22 October 1997 took place without his and the author's presence and that a request for postponement awaiting relevant medical evidence which would only be available on 23 October was rejected by the court. The reason for the haste was that the Tunisian embassy had issued a laissez-passer for the author which would only be valid for a few days.

3.2 Counsel provides the report of a follow-up interview held on 24 February 1997 between the author and the Immigration and Naturalization Department in which the author acknowledged that his real name was not A. and explained that he would only reveal his real name and provide proof of his identity if he was given assurances that he would not be sent back to Tunisia. He also said that his father had experienced problems when he tried to obtain an extract from the birth register after his departure. He was questioned by officials of the municipality and later by the police who asked him for the author's whereabouts.

3.3 Counsel indicates that according to reports by Amnesty International there is a consistent pattern of gross human rights violations in Tunisia. He also provides copy of a letter sent by the United Nations High Commissioner for Refugees on 4 March 1997 to a colleague of his in connection with the asylum request of another Tunisian in which the following is stated: "We can confirm that the mere fact of being perceived by the Tunisian authorities as a member or supporter or even having just simple contacts with the *Al-Nahda* movement could lead to persecution. Moreover, we are in fact aware that some individuals have been interrogated and even harassed by the Tunisian police on the mere ground of having received letters from Tunisians abroad who are considered by the Tunisian authorities to be members of *Al-Nahda*. Therefore, claims of persecution from asylum seekers of the first mentioned category may well be of a nature that would entitle them to be recognized as refugees."

3.4 The author claims that if he is returned to Tunisia he will be arrested for having deserted and that his desertion would be construed by the Tunisian authorities as evidence of his links with the *Al-Nahda* movement. In view of his experience during his previous detentions he believes he will be subjected to torture again.

State party's observations

4.1 On 24 October 1997 the Committee, acting through its Special Rapporteur for new communications, transmitted the communication to the State party for comments and requested the State party not to expel or deport the author to Tunisia while his communication was under consideration by the Committee.

4.2 In a submission dated 23 December 1997 the State party indicates that the author applied for asylum on 24 March 1994, after he had been discovered living illegally in the Netherlands under the name of M.A.O., born in Iraq. Later on, he declared to the authorities that he was in fact an Algerian national and that his name was A. His application was rejected by decision of 14 December 1995. He then lodged an objection against this decision and asked the President of the District Court for an interim injunction to prevent his expulsion. In the objection he claimed to have Tunisian nationality and to live in fear of the Tunisian authorities. The application for an interim injunction was dismissed on 19 July 1996 and the author's objection was held to be unfounded by decision of 15 July 1996. An appeal against this decision was declared to be unfounded by judgement of 17 January 1997.

4.3 On 10 February 1997 the author was detained following a check for illegal labour in a company and placed in custody pending expulsion. On 12 February 1997 he submitted a second application for asylum, which was rejected by decision of 28 February 1997. This decision was delivered to the author on 4 March 1997 and, at the same time, he was notified that he would have to leave the Netherlands immediately.

4.4 On 5 March 1997 the author lodged an objection against the negative decision and filed an appeal with the District Court. He also applied to the President of the District Court for an interim injunction to prevent his expulsion. This request was again refused, and the objection and appeal were again declared to be ill-founded. Following his communication to the Committee and the Committee's request under rule 108, paragraph 9, of its rules of procedure the author was released from custody on 11 November 1997 and his expulsion suspended.

4.5 The State party considers that the author has exhausted all domestic remedies and, not being aware of any other grounds for inadmissibility, has no objection to the admissibility of the communication.

4.6 As for the merits of the case, the State party argues that in the proceedings that followed his first request for asylum the author stated that he had previously lied about his nationality and that he was Algerian. He explained that in 1989 he had fallen in love with the daughter of his school's headmaster. The latter did not accept the liaison and in the course of an argument the author destroyed some property. As a result he was detained in a youth detention centre for three months. After his release he went to France but the French authorities deported him in 1990.

4.7 The author stated that he had been called up for military service in 1992 but failed to comply because of a lung condition. As a result he was arrested in 1993. His request for exemption on medical grounds was denied. Three months later he deserted and stayed with a friend until he left for Italy on 23 November 1993. He stayed in Italy for two and a half months before travelling by train to the Netherlands.

4.8 In the additional grounds accompanying the objection of 4 April 1996 the author stated that he in fact came from Tunisia where he had had problems with the authorities because of his ties with a teacher who was a fundamentalist and a supporter of the *Al-Nahda* party. He claimed that he had been arrested, questioned and beaten on several occasions and accused of disseminating fundamentalist pamphlets.

4.9 In the autumn of 1992, after having helped the teacher to escape to Algeria, he was arrested and questioned for nine days concerning the latter's whereabouts. He also stated that he had been ill-treated: his feet were beaten with a stick, breaking three of his toes, and he remained confined in a chicken coop. When he reported back one month after his release he was informed that he would be prosecuted and brought to trial.

4.10 He also stated that he had heard from his father that friends in similar circumstances had been sentenced to three years of imprisonment and that he himself had been sentenced to 15 months for desertion. The author expects to be punished for his desertion when he returns to his country.

4.11 The State party argues that the general situation in Tunisia is not such that asylum seekers from that country can automatically be regarded as refugees and that the author should be able to argue plausibly that certain facts and circumstances exist that objectively justify his fear of persecution within the meaning of the law relating to refugees.

4.12 The author's individual account is above all implausible. He has made conflicting statements on a number of points, including his nationality, the reasons for his journey to the Netherlands, the route by which he travelled there and his arrests in Tunisia. Furthermore, during the preparations for his expulsion to Tunisia it was established on the basis of fingerprints that he is known to the Tunisian authorities under the name of M. The inconsistencies in the author's statements are of a substantive nature and indeed raise doubts about the general veracity of his claims.

4.13 The author has at no time been politically active, nor has he put himself in the public eye as such in any other way. During the proceedings he stated that he had no contact with the *Al-Nahda* party. He had problems solely because he had contacts with a teacher who was a member and had helped him to flee the country. Even if it is true that the author did help that person, he has not convincingly shown that he experienced problems with the Tunisian authorities as a result and that he was held in detention for nine days. Nor has the author argued convincingly that he is to be prosecuted and brought to trial. Even if this were true, the fact that the author was merely told to report back a month after his release certainly does not suggest that the Tunisian authorities consider him as a serious opponent.

4.14 The author has also argued that he had been found guilty of desertion. The State party does not consider this plausible, because it is based solely on a statement made by the author's father and is not supported by any documentary proof. The State party does not believe, in any case, that he deserted on the basis of any political or religious conviction. It is not plausible that the author would experience problems upon returning to his country because of his desertion, since he cannot be regarded as a dissident. It has not been convincingly argued that any punishment imposed for refusal to perform military service will be disproportionately severe or that the author will be subjected to discriminatory persecution instead of an ordinary punishment.

4.15 The State party contends that whenever an asylum seeker states that he has been ill-treated or tortured the Immigration and Naturalization Service asks the Medical Assessment Section of the Ministry of Justice to give an opinion. The doctors attached to this section can either examine the person concerned themselves or seek the opinion of a medical practitioner who has treated him. Given the limited capacity of this section,

however, asylum cases are only submitted to it for assessment when there are good reasons to subject the individual concerned to further examination in the interest of assessing his or her request for asylum. Aside from this, the individual concerned or his legal representative can always consult a medical practitioner independently. The latter can then supply a medical certificate stating that certain scars could have been caused by the alleged ill-treatment for use in the proceedings and the assessment of the request for asylum.

4.16 In the present case the author did not indicate that he had psychological problems until a letter of 17 October 1997, i.e. three and a half years after his arrival in the Netherlands. During the proceedings concerning his first asylum request he never mentioned having had traumatic experiences.

4.17 In connection with the author's alleged medical problems, the State party observes that he has not submitted a single medical document. His claims about certain scars were too insubstantial to prompt a medical examination. Even if it is assumed that the author is indeed experiencing psychological problems, the Aliens Advisory Office held, in its report on this case dated 23 October 1997, that, given the available information on the opportunities for obtaining psychiatric treatment in Tunisia, there is no need for the author to remain in the Netherlands for the purpose of receiving psychiatric treatment.

4.18 The State party further contends that, according to sources such as Amnesty International and the UNHCR, supporters of the *Al-Nahda* party risk being subjected to torture or inhuman treatment in Tunisian prisons. For this reason it exercises particular care in decisions on requests for asylum received by members of this group. It has been established, however, that the author is not a supporter of the *Al-Nahda* party. Moreover, he has failed to make a convincing case for his assertion that because of his ties with supporters of this party he risks being tortured in prison. In any case, the author has failed to argue plausibly that on the basis of his ethnic background, his alleged political affiliation and his history of detention he would be in danger of being subjected to torture upon his return. The State party is therefore of the opinion that the communication is ill-founded.

Counsel's comments

5.1 In his comments on the observations made by the State party, counsel points out that the State party did not include in its submission to the Committee the information provided by the author in his follow-up interview with the immigration authorities where he acknowledged having lied about his identity and nationality and explained his reasons for having done so. The inconsistencies referred to by the State party were explained in that interview, a report of which has been provided to the Committee. Counsel also refers to previous jurisprudence in which the Committee noted that some of the author's claims and corroborating evidence had been submitted only after the refugee claim had been refused by the refugee board and deportation procedures had been initiated and concluded that this behaviour was not uncommon among victims of torture.

5.2 With respect to the different statements about his nationality, the author explained that during his first interviews he was too afraid to immediately give his correct country of origin and name in view of the fact that Tunisia is a popular tourist destination and for that reason Tunisians are not granted asylum in Europe. In any case the Tunisian Embassy has confirmed that the author is indeed a Tunisian citizen.

5.3 Counsel also contends that the court tried the author's case in great haste in order not to allow a laissez-passer issued by the Tunisian Embassy for a few days to expire. As a result the author and his counsel had no possibility to provide the court with useful information in support of the author's claim.

5.4 Counsel stresses that the author was tortured and kept for 15 days (not 9 as indicated in the State party's submission) in a chicken coop (a wooden cage especially designed to lock people up) at police headquarters at Kaf. The State party barely mentions the fact that his toes were broken and he has scars on his back as a result of torture. The author could have provided many details about the places in which he was held and those details could have been verified by the Dutch authorities, for example the fact that soldiers sent to Ghafsa are mainly those considered to be opponents of the Government and that they are treated completely differently from soldiers in any other barracks. The report on the follow-up interview shows, however, that the authorities never asked for such details and that those provided by the author were ignored, as were the report of Amnesty International and the letter from UNHCR referred to above. Counsel further argues that in the period 1990-1992 the author's sister was arrested, convicted and held in prison for six months because she was openly sympathising with *Al-Nahda*.

5.5 With respect to the medical issues, counsel argues against the State party's assertion that the author did not submit a single medical document. The authorities had received a letter (copy of which is provided to the Committee) dated 20 October 1997 from a social worker who has been in close contact with the author since 1995 and reports serious mental and physical difficulties as a result of torture and the fear of being sent back to Tunisia. The letter indicates that the author suffered from sleeping disorders. Periods of sleeplessness alternated with periods of troubled sleep during which he had recurrent nightmares in which he was arrested and relived his experiences of being maltreated. He also went through periods of depression and lived in constant fear of having to return to Tunisia and being arrested and tortured again. His physical condition during the day was characterized by continuous tension which led to headaches, stomach aches and back complaints. He also had respiratory difficulties caused by a medical disorder of the lungs. According to the social worker the author had told him that he had been tortured following his contacts with a politically active member of the *Al-Nahda* party. This fact together with his desertion from the army were considered offences by the Tunisian authorities. The author also described to the social worker the kind of treatment to which he had been subjected and showed him the scars on his back. In his view, the fact that the author first gave two other identities was the result of lack of trust in the authorities and his fear of not being taken seriously. The social worker also stated that in view of his health problems he had referred the author to a Riagg physician from whom he had not received much assistance. In the counsel's view that letter shows that the State party is wrong when it suggests that the claim of serious psychological problems was used mainly in order to prolong the asylum procedure.

5.6 Counsel also finds it surprising that the medical investigation carried out by the Bureau Vreemdelingen Advisering dated 23 October 1997 was merely limited to establishing that there are facilities for psychiatric help in Tunisia, and that the statements of the author about the torture, the scars he bears and the traumas he has indicated were not even considered. This, along with the letter from the social worker, should have prompted a more thorough examination.

5.7 Counsel also provides copy of a medical report dated 23 October 1997 made by the psychiatrist who examined the author at the aliens detention centre "De Geniepoort" in which it is indicated that the author presents a suspicious attitude which might possibly result from a psychiatric disorder. It is also indicated that, because of that attitude and the incomplete information concerning his prior history, a diagnosis cannot be made with certainty but a schizophrenic development cannot be excluded. Further examination is required.

Issues and proceedings before the Committee

6.1 Before considering any claims contained in a communication, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement. The Committee also notes that all domestic remedies have been exhausted and finds that no further obstacles to the admissibility of the communication exist. Since both the State party and the author's counsel have provided observations on the merits of the communication, the Committee proceeds with the consideration of those merits.

6.2 The issue before the Committee is whether the forced return of the author to Tunisia would violate the obligation of the Netherlands under article 3 of the Convention not to expel or to return a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

6.3 The Committee must decide, pursuant to paragraph 1 of article 3, whether there are substantial grounds for believing that the author would be in danger of being subjected to torture upon return to Tunisia. In reaching this decision, the Committee must take into account all relevant considerations, pursuant to paragraph 2 of article 3, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. The aim of the determination, however, is to establish whether the individual concerned would be personally at risk of being subjected to torture in the country to which he or she would return. The existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute a sufficient ground for determining that a particular person would be in danger of being subjected to torture upon his return to that country; specific grounds must exist indicating that the individual concerned would be personally at risk. Similarly, the absence of a consistent pattern of gross violations of human rights does not mean that a person cannot be considered to be in danger of being subjected to torture in his or her specific circumstances.

6.4 Reports from reliable sources have over the years documented cases suggesting that a pattern of detention, imprisonment, torture and ill-treatment of persons accused of political opposition activities, including links with the *Al-Nahda* movement, exist in Tunisia.

6.5 The Committee notes that in the proceedings that followed his first request for asylum the author lied about his identity and his nationality and expressed a number of inconsistencies as to the reasons that prompted his departure from Tunisia. In the Committee's view, however, these inconsistencies were clarified by the explanations given by the author in his interview with immigration authorities on 24 February 1997, explanations which have not been referred to in the State party's submission.

6.6 With respect to the medical evidence provided by the author, in the Committee's view the State party has failed to explain why his claims were considered insufficiently substantial as to warrant a medical examination.

6.7 The author has repeatedly stated that he is not a supporter of the *Al-Nahda* movement. This fact leads the State party to conclude that the Tunisian authorities would not have interest in him. The Committee notes, however, that the State party does not dispute that the author was tortured while held in police custody as a result of assisting an *Al-Nahda* member to flee to Algeria and emphasizes the fact that it occurred because of the *Al-Nahda* association. It also notes that the author escaped from the barracks where he was performing military service. If the author was tortured in the past despite not being an *Al-Nahda* supporter, he could be tortured again in view of his past history of detention, his assistance

of an *Al-Nahda* member to flee to Algeria and his desertion from the military barracks in Ghafsa.

6.8 In the circumstances, the Committee considers that substantial grounds exist for believing that the author would be in danger of being subjected to torture if returned to Tunisia.

7. In the light of the above, the Committee is of the view that, in the prevailing circumstances, the State party has an obligation, in accordance with article 3 of the Convention, to refrain from forcibly returning the author to Tunisia or to any other country where he runs a real risk of being expelled or returned to Tunisia.

[Done in English, French, Russian and Spanish, the English text being the original version.]

3. Communication No. 97/1997

Submitted by: Orhan Ayas
[represented by counsel]

Alleged victim: The author

State party: Sweden

Date of communication: 12 November 1997

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 12 November 1998,

Having concluded its consideration of communication No. 97/1997, submitted to the Committee against Torture under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the author of the communication, her counsel and the State party,

Adopts its Views under article 22, paragraph 7, of the Convention.

1. The author of the communication is Mr. Orhan Ayas, a Turkish citizen born in 1973, currently residing in Sweden where he is seeking asylum. He claims that his forced return to Turkey would constitute a violation by Sweden of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. He is represented by counsel.

Facts as presented by the author

2.1 The author is a Kurd born and raised in Midyat, south-east Turkey. His family has been known to the Turkish authorities for a long time because several family members and friends have been involved in the activities of the PKK (Partya Karkeren Kurdistan, Kurdistan Worker's Party). They also owned two cafes which were meeting places for PKK sympathizers. As a result, members of the family have frequently been subjected to arrest and interrogation. The frequency as well as the gravity of the intimidation increased in the late 1980s, after one of the author's brothers fled the country because of his political activities. In 1991, when the author was 18, he was arrested three times by the military police and interrogated, *inter alia*, about his brother's activities abroad. On these occasions, the author states that he was blindfolded and subjected to different methods of torture such as beatings, being hung by his arms, hit on the soles of the feet, hosed with high-pressure ice cold water and deprived of food. He also says that he still has scars from this treatment. In

1991 he left Midyat and went to Antalya, where he shared an apartment with four members of the PKK.

2.2 In July 1992 he was arrested by the police, together with some Kurdish friends, and kept in detention for two days during which he was interrogated about his activities in Antalya and beaten. He was also pushed down stairs as a result of which he injured one of his eyes. In August 1992 he participated in the organization of a non-authorized Kurdish festival. Two of the organizers were arrested and subsequently sentenced to prison terms. As the police were looking for him, the author fled to Istanbul where he went into hiding until he managed to leave the country.

2.3 The author arrived in Sweden in February 1993 and applied for asylum. On 28 March 1994 the Swedish Immigration Board rejected the application on the grounds that the information submitted lacked credibility. The Board gave the following reasons for its assessment: (a) The author had destroyed his passport and refused to reveal in what name and for what nationality it had been issued; (b) he had not left Turkey immediately after the event that he claimed had led to his flight; (c) he had failed to make a convincing case that the authorities were interested in him, since he had stated that he was not himself politically active.

2.4 The author appealed to the Aliens Appeal Board claiming that he was afraid that the persons who had assisted him to flee could be in trouble if he revealed any information about the passport. For that reason he had decided to follow their instructions and destroyed it. He reiterated that immediately after the arrest of his two friends he had gone into hiding until his family could arrange for his flight from Turkey. He also stated that in September 1993 one of his brothers was arrested and sentenced to 15 years' imprisonment for his activities with the PKK. The author was informed by his family that, in that context, the police had searched for him at his home in Midyat and beaten his father and younger brother. In support of his claim the author submitted a newspaper article regarding the incident in which his brother was arrested. He also submitted a transcript of a court hearing concerning the friends who had been arrested during the festival.

2.5 On 2 January 1995 the Aliens Appeal Board rejected the appeal for lack of credibility, in view of the fact that the author had waited two days before he applied for asylum and that he destroyed the passport with which he had arrived in Sweden. Moreover, the Board stated that the transcript of the court hearing did not confirm that the author had been politically active.

2.6 The author submitted a new application in which he disclosed, for the first time, that he himself had actively supported the PKK. He explained that his relatives had strongly advised him not to reveal any connection with the PKK because of the risk of being considered a "terrorist" by the Swedish authorities. The author also submitted the verdict of a military court which showed that in 1993 he had been sentenced in absentia to five years' imprisonment for his activities and affiliation with the PKK. He had been sent the verdict by his father in Turkey. On 7 March 1995 the Aliens Appeals Board rejected the new application. The Board found that the author's explanation of why he had not revealed his affiliation with the PKK at an earlier stage was not credible and questioned the authenticity of the verdict of the military court.

2.7 The author filed a second new application in which he requested that the Board clarify its grounds for challenging the authenticity of the verdict. This application was also turned down. The Board pointed out that military tribunals no longer handled that type of case in Turkey and noted that the stamps on the document were inconsistent with Turkish law.

2.8 The author changed counsel and filed a third new application based on the medical examinations performed by a psychiatrist and a forensic expert from the Centre for Torture and Trauma Survivors (CTD) at the Karolinska University Hospital in Stockholm. The medical reports indicated, *inter alia*, that the author suffers from post-traumatic stress syndrome which can be attributed to his having been tortured and that the claim of torture appeared to be entirely credible. The author also submitted a transcript of the Security Court decision in which his brother was sentenced to 15 years' imprisonment for his connections with the PKK. One of the accused before the court disclosed that the author, who was mentioned by name, had participated in an unlawful fund-raising transaction for the PKK. The author also pointed out that the verdict of the military court had been handed down in 1993, at a time when the military courts were still competent in such cases. This new application was rejected on 1 September 1997 on the grounds that the author lacked credibility. As for the medical evidence, the Board considered it insufficient to conclude that the author's injuries had been caused by torture.

Complaint

3.1 The author's counsel argues that the Swedish authorities have based their decisions not to grant asylum on their assessment that the author lacks credibility; however, they have overlooked the factors explaining his behaviour and attitude. For instance, he was only 20 years old when he arrived in Sweden. Prior to his arrival he had lived a long time under severe stress and had a well-founded fear of persecution. In this context, he was instructed by the persons who assisted him to flee to destroy the passport with which he arrived and not to reveal the name on the passport. It could not be expected that, at this point, he would be in a position to understand the weight the Swedish authorities would attach to these circumstances. He applied for asylum on the second day after his arrival, which can hardly be considered a significant delay. His relatives strongly advised him not to reveal any personal link with the PKK because of the risk of being considered a terrorist by the Swedish authorities. During the initial interview the author explained the basic elements that had provoked his flight to Sweden. These are not inconsistent with his subsequent amendments.

3.2 Contrary to article 3, paragraph 2, of the Convention, the Swedish authorities have not taken into account all relevant circumstances in their assessment of a future risk of torture. They have, moreover, attached unreasonable weight to circumstances which they consider reduce the credibility of the author's story as opposed to the substantial grounds submitted in support of his claim. The circumstances in the case, including the existence of a consistent pattern of gross violations of human rights in Turkey and the fact that the author is a victim of torture, clearly show that his return to Turkey would expose him to a particular risk of being subjected to torture again.

State party's observations

4.1 On 26 November 1997 the Committee, acting through its Special Rapporteur for new communications, transmitted the communication to the State party for comments and requested the State party not to expel the author to Turkey while his communication is under consideration by the Committee. In its submission to the Committee the State party indicates that, following the Committee's request, the Swedish Immigration Board decided to stay the enforcement of the expulsion order until further notice, pending the Committee's final decision on the matter.

4.2 With respect to the admissibility of the communication, the State party submits that, in accordance with the Aliens Act, a new request for a residence permit may be lodged with the Aliens Appeals Board at any time, provided that new circumstances likely to call for

a different decision are raised. Moreover, on the basis of its arguments on the merits, the State party maintains that the communication is incompatible with the provisions of the Convention and should therefore be considered inadmissible.

4.3 As for the merits of the communication, the State party contends that, in determining whether the forced return of the author would constitute a breach of article 3 of the Convention, the following issues should be examined: (a) The general situation of human rights in Turkey; (b) the author's personal risk of being subjected to torture in Turkey; and (c) the foreseeable and necessary consequences of his return to Turkey.

4.4 With respect to the general situation of human rights in Turkey the State party submits, as a well-known fact, that arbitrary arrests, demolition of villages and torture are used in the fight against the Kurdish separatists. In its view, however, the situation is not so serious that it constitutes a general obstacle to the deportation of Turkish citizens of Kurdish origin. A large part of the Turkish population consists of persons of Kurdish origin. While many of them live in the south-east they are presently scattered all over the country where they are completely integrated into Turkish society in general. If an expulsion order is carried out with respect to a Turkish citizen of Kurdish origin, he or she will not be deported from Sweden to the Kurdish areas against his or her will, but to Istanbul or Ankara.

4.5 The Swedish authorities have clearly found no substantial grounds for believing that the author would be at risk of being subjected to torture upon his return to Turkey. They have not considered that the information about the author's political activities and torture is credible. Indeed, there are a number of elements in the author's story which give rise to doubts. In the initial investigation, following the first request for asylum, the author clearly stated that neither he nor his family had been engaged in political activities. He also informed the authorities concerned that he did not leave Turkey immediately after the event that led to his flight from the country and that he had no documents on entry because he had destroyed them after his arrival in Sweden. Owing to these circumstances, the immigration authorities concluded that he had not made it credible that he was of interest to the Turkish authorities.

4.6 In a new submission the author claimed that he had been a member of the PKK engaged in political activities. This new claim, however, was not considered to be credible, nor was the explanation of why he had not revealed the information at an earlier stage of the proceedings. The authorities also questioned the authenticity of the document submitted by the author which he claimed showed that he had been sentenced to five years' imprisonment for political activities.

4.7 Furthermore, in his third new application to the Aliens Appeal Board the author claimed that his whole family was known to be opposed to the regime in Turkey and submitted a copy of a judgement pronounced on 31 August 1995 by a security court in Izmir by which one of his brothers was sentenced to 15 years' imprisonment for his connections with the PKK. He himself was mentioned in the judgement.

4.8 Information provided by the Swedish Embassy in Ankara, according to which tampering with the copy of the judgement cannot be ruled out, further undermines the author's general credibility. In a copy names and words can be deleted and replaced without detection. The author could easily have obtained and submitted an original or a duly authenticated copy of the judgement. Moreover, the author is not mentioned among the suspects, the condemned or the acquitted in the judgement, which means that he was not even prosecuted.

4.9 The medical reports fail to give sufficient support to the claim that the author's injuries were caused in the manner described by him. One of the doctors indicated in his written

statement that the author was subjected to torture in 1987. However, the author himself did not assert this. No physical evidence has been found to confirm torture and it has not been possible with any certainty to connect any of the injuries to the alleged torture. It should also be noted that the author did not produce any medical evidence and did not undergo any medical examination until a late stage in the proceedings.

4.10 To sum up, the author has not substantiated his allegation that he would run a particular personal risk of being detained and tortured if he were to return to Turkey. If he wishes to avoid the disturbances that undoubtedly characterize the south-east region, he has the possibility of staying in another part of the country.

4.11 On the basis of the foregoing, the State party contends that the information which the author has provided does not demonstrate that the risk of being detained or tortured is a foreseeable and necessary consequence of his return to Turkey. An enforcement of the expulsion order to Turkey would therefore, in the present circumstances, not constitute a violation of article 3 of the Convention. Furthermore, as a consequence of the fact that the author's claims lack the substantiation that is necessary in order to render the communication compatible with article 22 of the Convention, the present communication should be considered inadmissible.

Counsel's comments

5.1 In his comments on the State party's submission, counsel refers to the question of exhaustion of domestic remedies and states that there are no new circumstances that could justify filing a new application in accordance with the Aliens Act. All remedies, therefore, have been exhausted.

5.2 Counsel also refers to the statement that the author, if deported, would not be returned to south-east Turkey. In this regard it should be emphasized that persons suspected of affiliation to the PKK have no alternative but to flee abroad; the author faces a substantial risk of being subjected to torture anywhere in the country, regardless of which city he might be returned to. Moreover, any involvement with the PKK is considered as a very serious crime.

5.3 With respect to the changes made by the author when telling his story to the immigration authorities, counsel reiterates that the author did conceal facts during the initial interview. However, he provided a rational explanation as to why he did so. In addition, he gave an account of the main elements of his story and was able to provide evidence that the majority of his amendments were true. In view of the medical evidence substantiating that he has been tortured, those changes should not have a decisive effect on the author's general credibility.

5.4 The State party refers to a report by the Swedish Embassy in Ankara concerning the judgement pronounced by the Security Court in 1995 and concludes that tampering with the document cannot be excluded. The State party concludes this to mean that the document may have been altered; however, the opposite conclusion could equally be valid. To support its conclusion of possible tampering the Embassy states, *inter alia*, that the middle name of the author (i.e. Yusef) was not mentioned. It should be noted, however, that "Yusef" is the name of the author's father, as indicated in his identity document, and has incorrectly been attributed to the author by the Swedish authorities. The author does not have a middle name. It is also argued that the author's name is only mentioned once in the verdict and that he was not one of the prosecuted. It should be recalled, however, that this is a summary verdict concerning several defendants and that the author had already fled the country when it was issued. The verdict did not involve any persons who had not already been arrested. The action attributed to the author in the court decision falls under the anti-terrorist

legislation and confirms, therefore, that the Turkish authorities would have an interest in him.

5.5 The State party stresses that the author did not request asylum immediately after his arrival. However, it has not given any explanation as to why this circumstance should affect the credibility of the author.

5.6 With respect to the assertion in one of the medical reports that the author had been tortured in 1987, counsel provides a copy of a written statement made by the psychiatrist on 13 May 1998 acknowledging that this was his mistake. Counsel also contends that the State party never sought an expert review of the medical reports nor contacted the Centre for Torture and Trauma Survivors. This, however, should have been the logical thing to do in view of the doubts the authorities had expressed regarding the author's credibility.

5.7 In one of the applications the author requested that, if the Appeal Board had doubts as to the credibility of the information submitted, it should allow the author an oral hearing. The Board rejected the request without submitting any reasons. According to the Aliens Act such a hearing is mandatory upon request, unless it would be immaterial for the outcome of the case. Given that the Board's rejection was based on the author's credibility, it is difficult to understand how an oral hearing could be considered "immaterial for the outcome of the case".

Issues and proceedings before the Committee

6.1 Before considering any claims contained in a communication, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement. The Committee is further of the opinion that all domestic remedies have been exhausted and finds that no further obstacles to the admissibility of the communication exist. Since both the State party and the author's counsel have provided observations on the merits of the communication, the Committee proceeds with the consideration of those merits.

6.2 The issue before the Committee is whether the forced return of the author to Turkey would violate the obligation of Sweden under article 3 of the Convention not to expel or to return a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

6.3 The Committee must decide, pursuant to paragraph 1 of article 3, whether there are substantial grounds for believing that the author would be in danger of being subjected to torture upon return to Turkey. In reaching this decision, the Committee must take into account all relevant considerations, pursuant to paragraph 2 of article 3, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. The aim of the determination, however, is to establish whether the individual concerned would be personally at risk of being subjected to torture in the country to which he or she would return. The existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute a sufficient ground for determining that a particular person would be in danger of being subjected to torture upon his return to that country; specific grounds must exist indicating that the individual concerned would be personally at risk. Similarly, the absence of a consistent pattern of gross violations of human rights does not mean that a person cannot be considered to be in danger of being subjected to torture in his or her specific circumstances.

6.4 The Committee is aware of the serious human rights situation in Turkey. Reports from reliable sources suggest that persons suspected of having links with the PKK are frequently tortured in the course of interrogations by law enforcement officers and that this practice is not limited to particular areas of the country.

6.5 It is not in dispute that the author comes from a politically active family. Moreover, the Committee considers the explanations regarding his own political activities as credible and consistent with the findings of the medical reports according to which he suffers from post-traumatic stress syndrome and his scars are in conformity with the alleged causes. Although the author changed his first version of the facts he gave a logical explanation of his reasons for having done so. Hence, the Committee has not found inconsistencies that would challenge the general veracity of his claim.

6.6 In the circumstances the Committee considers that, given the human rights situation in Turkey, the author's political affiliation and activities with the PKK as well as his history of detention and torture constitute substantial grounds for believing that he would be at risk of being arrested and subjected to torture if returned to Turkey.

7. In the light of the above, the Committee is of the view that the State party has an obligation, in conformity with article 3 of the Convention, to refrain from forcibly returning the author to Turkey or to any other country where he runs a real risk of being expelled or returned to Turkey.

[Adopted in English, French, Russian and Spanish, the English text being the original version.]

4. Communication No. 100/1997

Submitted by: J.U.A. (name deleted)
[represented by counsel]

Alleged victim: The author

State party concerned: Switzerland

Date of communication: 6 December 1997

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 10 November 1998,

Having concluded its consideration of communication No. 100/1997, submitted to the Committee against Torture under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the author of the communication, his counsel and the State party,

Adopts the following:

Views under article 22, paragraph 7, of the Convention

1. The author of the communication is J.U.A., a Nigerian citizen born in 1968. He is currently living in Switzerland, where he has applied for asylum, and risks being sent home. He claims that his expulsion would constitute a violation of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Facts as submitted by the author

2.1 The author claims that he is a member of NADECO (National Democratic Coalition), the opposition movement. In 1994, he took part in an action committee opposing the plan to hold the Junior World Cup for Football in Lagos, which in his view was an act of political propaganda by the then Government of Nigeria. He contacted some key figures and university leaders with a view to organizing demonstrations in a number of towns, including Enugu, where he grew up. In February 1995, a police officer who was a friend of his father's warned him that the Lagos police had issued a warrant for his arrest because of his activities in opposition to the championship. After learning of the warrant for his arrest, the author, who normally lived in Lagos, went to the town of Epe, where he hid for several months before his departure for Europe.

2.2 On 14 August 1995, the author filed an application for asylum in Switzerland, which was rejected on 28 May 1996 by the Federal Office for Refugees (*Office Fédéral des réfugiés* — ODR). On 23 September 1997, his appeal was rejected by the Appeal Commission (*Commission suisse de recours en matière d'asile* — CRA). A request for revision, filed on 6 November 1997, was rejected by CRA on 18 November 1997.

2.3 By way of evidence, the author produced the warrant for his arrest, a document which he claims to have obtained from Nigeria. The Swiss authorities considered the document to be a forgery. The author states that he was unaware of this and that he was acquitted by the St. Gallen district court of the charge of falsifying documents. He likewise points out that the Swiss authorities never contacted any of the persons with whom he worked on preparations for the demonstrations in Nigeria, nor the police officer mentioned above, despite the fact that he provided them with the officer's name and address. In addition, he states that he was not allowed to see the report about his case drawn up by the Swiss Embassy in Lagos, and received only a summary. Finally, he claims that, during his two hearings with the Swiss immigration authorities, he gave the same version of the events that had prompted his departure from Nigeria.

Complaint

3.1 The author points out that the Swiss authorities have not granted asylum to anyone from Nigeria since 1991, despite the fact that some 100 applications are filed every year. He claims that prisoners are systematically tortured in Nigeria, and that rejected asylum-seekers are arrested on their return. In view of his experiences in Nigeria, and of his activities in Switzerland to promote human rights in Nigeria, including the items he has published in *Planetá*, *Ostschweiz* and *St. Galler Tagblatt*, as well as his participation in various demonstrations, he risks being persecuted by the Nigerian authorities if he is sent back. He would in all likelihood be arrested and held under threat of torture.

State party's observations on the admissibility and merits of the communication

4.1 By letter dated 19 February 1998, the State party informs the Committee that, pursuant to its request under rule 108 (9) of the Committee's rules of procedure, the authorities have decided to defer sending back the author for so long as his communication is pending before the Committee. The State party also points out that the author has exhausted domestic remedies, and does not contest the admissibility of the communication.

4.2 With regard to the merits, the State party observes that the author filed an application for asylum which was rejected by ODR, *inter alia*, because he had not succeeded in credibly establishing that he belonged to NADECO. Other grounds for CRA's rejection of his appeal and his request for revision were that the author's allegations, in particular concerning the reasons for his departure from his country of origin, were not sufficiently plausible and that

the author's fear that he would be persecuted by the Nigerian authorities for his political activities in exile were unfounded.

4.3 Following ODR's decision to reject the application for asylum, particularly on the ground that the allegations that he was wanted by the police were based on two forged arrest warrants, criminal proceedings were brought by the authorities of the canton of St. Gallen for falsification of documents, resulting in the author's acquittal. In its acquittal decision, the court deemed that the non-authentic nature of the documents had not been proved. The court stated that, for the purposes of rendering a decision, it lacked material for a comparison, and considered that ODR had failed to satisfy the requirements of criminal law by not consulting an independent expert.

4.4 The State party argues that the requirements regarding proof differ, depending on whether proceedings are criminal or administrative, and that the criminal decision of the district court by no means constituted a finding that the documents in question were authentic. The decision was substantiated only briefly. It was entirely unclear on what basis the court differed from ODR's findings regarding the ample proof of falsification. The procedure followed by ODR in the case in point was altogether normal and compatible with law, jurisprudence and practice. It was based on the experience and knowledge of the Office, which keeps documentation of its own on the countries of origin of asylum-seekers.

4.5 The arguments presented to the Committee by the author have already been adduced before the Swiss authorities and have been examined by ODR and CRA. The author first attempted to prove that he was wanted by the police, invoking two arrest warrants which in the view of ODR are forgeries. Secondly, to support his claim that he was afraid of arrest, he furnished a list of members of NADECO who had allegedly been arrested, and on which his own name appears, according to information obtained by the Swiss Embassy in Lagos, however, that list did not conform to reality. In fact, most of the individuals whose names appear on it, and who according to the author have been detained, are not in detention. According to the same sources, the author's name was unknown in the inner circles of NADECO, nor was he sought by the police. Furthermore, the author failed to produce, during the asylum process, any reliable official document of attestation, with the result that his identity is not established with certainty.

4.6 In addition, the author's statements contained a number of discrepancies. With regard, for example, to Epe Town, the place where he is said to have hidden before leaving the country, he provided two different accounts of its geographical location, in Lagos and near Enugu, although those two cities are 500 kilometres apart.

4.7 The author also contends that he risks persecution for his commitment to respect for human rights in Nigeria — political activities in which he has participated since his arrival in Switzerland. In the view of the State party, however, there is insufficient reason to believe that the Nigerian authorities would pay much attention to such opinions, or want to pursue the author on that basis, since his views are mild in comparison to the criticisms levelled at the regime by the Nigerian press or by the opposition in exile, if in fact the Nigerian authorities are even aware of the author's articles, considering the small circulation of the publications in question.

4.8 Finally, the contention that Nigerian asylum-seekers in general, and the author in particular as an asylum-seeker, are arrested on their return is unfounded, according to reliable sources available to the Swiss asylum authorities. No properly substantiated case has been reported that supports the notion that rejected asylum-seekers are systematically persecuted simply for filing an application for asylum.

4.9 Having carefully examined the case in question as well as the situation in the country of origin, the State party consequently considers that there are no substantial grounds for believing that the author would risk being subjected to torture if he returned to Nigeria.

Author's comments

5.1 The author stresses that, despite the brutality of the political regime in Nigeria, the Swiss authorities have systematically rejected all asylum applications by Nigerian citizens for at least seven years now. As for the matter of discrepancies in his statements, he contends that he has consistently said that he went to Epe after learning of the warrant for his arrest, which confirms his credibility.

5.2 It has not been established that the documents he submitted were forged. The decision of the district court was substantiated only briefly because the court suggested that the author should forego a detailed statement of the grounds, but the proceedings themselves were not conducted in a summary manner.

Issues and proceedings before the Committee

6.1 Before considering any claims contained in the communication, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a) of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement. The Committee also notes that all domestic remedies have been exhausted, and finds there are no further obstacles to its declaring the communication admissible. Since the State party and the author have both made comments regarding the substance of the communication, the Committee will proceed to consider the communication on its merits.

6.2 The Committee must decide whether sending the author back to Nigeria would violate the State party's obligation under article 3 of the Convention not to expel or return (*refouler*) an individual to another State if there are substantial grounds to believe that he would be in danger of being subjected to torture.

6.3 The Committee must decide, pursuant to article 3, paragraph 1, whether there are substantial grounds for believing that the author would be in danger of being tortured if sent back to Nigeria. To do so, it must take account of all relevant considerations as called for by article 3, paragraph 2, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. The aim, however, is to determine whether the individual concerned would personally risk torture in the country to which he or she would return. It follows that the existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute sufficient grounds for determining whether the particular person would be in danger of being subjected to torture upon his return to that country; additional grounds must be adduced to show that the individual concerned would be personally at risk. Similarly, the absence of a consistent pattern of gross violations of human rights does not mean that a person cannot be considered to be in danger of being subjected to torture in his or her particular circumstances.

6.4 In the case in point, the Committee notes that the author has never been arrested or subjected to torture. Nor has the author claimed that persons in his immediate circle or individuals who participated in the events which according to him were the reason for his departure from the country were arrested or tortured. Furthermore, it has not been clearly established that the author continues to be sought by the Nigerian police or that the arrest warrant he furnished is an authentic document. Finally, the author has not cited specific

cases of individuals alleged to have been tortured in Nigeria after being rejected by countries from which they had requested asylum.

6.5 The Committee notes with concern the numerous reports of human rights violations, including the use of torture, in Nigeria, but recalls that, for the purposes of article 3 of the Convention, the individual concerned must face a foreseeable, real and personal risk of being tortured in the country to which he is returned. In the light of the foregoing, the Committee deems that such a risk has not been established.

6.6 On the basis of the above considerations, the Committee considers that the information before it does not show substantial grounds for believing that the author runs a personal risk of being tortured if he is sent back to Nigeria.

7. The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, concludes that the facts before it do not indicate a breach of article 3 of the Convention.

[Done in English, French, Russian and Spanish, the French text being the original version.]

5. Communication No. 101/1997

Submitted by: Halil Haydin
[represented by counsel]

Alleged victim: The author

State party: Sweden

Date of communication: 7 December 1997

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 20 November 1998,

Having concluded its consideration of communication No. 101/1997, submitted to the Committee against Torture under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the author of the communication, his counsel and the State party,

Adopts its Views under article 22, paragraph 7, of the Convention.

1. The author of the communication is Mr. Halil Haydin, a Turkish national currently residing in Sweden, where he is seeking refugee status. He claims that his forced return to Turkey would constitute a violation by Sweden of article 3 of the Convention against Torture. He is represented by counsel.

Facts as presented by the author

2.1 The author is a Turkish national of Kurdish ethnic origin from Bagdered, close to Adiyaman, in the south-eastern part of Turkey. He states that his father and brother were active sympathizers of the PKK (Partya Karkeren Kurdistan — Kurdistan Worker's Party) and that in 1984 his father was sentenced to two years' imprisonment by a military court for his political activities. The author himself began to support the organization actively in 1985. He started by giving food and shelter to members of the PKK, but eventually also handed out propaganda leaflets in his and surrounding villages.

2.2 In 1985 the author was arrested together with his brother and kept in detention without a trial in Pram Palace prison, Adiyaman, for a period of 40 days, during which he was

subjected to torture. He was beaten with fists, truncheons and other objects on his back, lower legs, face and the soles of his feet. He also received electric shocks.

2.3 After his release the author continued his political activities, of which he claims the Turkish authorities were aware. Whenever there was a clash between the PKK and Turkish police or military near the author's village he was arrested, kept in detention, interrogated for a couple of hours and then released. He was beaten and insulted in order to force him to cooperate with the Turkish authorities and to reveal names of PKK sympathizers. Following one of those clashes between the PKK and the security forces in March 1990 in a neighbouring village, the author was informed that his name had been revealed to the authorities. He then fled, together with his father, his brother and other inhabitants of his village, to the mountains. From there, he received help from the PKK to flee the country. He arrived in Sweden via Romania, where he stayed for one and a half months.

2.4 The author arrived in Sweden on 7 July 1990 and immediately applied for asylum. On 20 June 1991 the National Immigration Board rejected his application. His appeal was subsequently rejected by the Aliens Appeal Board on 1 December 1992. A so-called "new application" was turned down by the Aliens Appeal Board on 23 November 1994, and two further "new applications" were rejected on 29 April 1996 and 15 November 1996, respectively.

2.5 The author went into hiding and in December 1996, the immigration authorities' decision to expel the author could no longer be enforced due to the statute of limitation. A new asylum procedure was then initiated. On 2 October 1997, the National Immigration Board rejected the author's new request for asylum. His appeal was subsequently rejected by the Aliens Appeal Board on 27 November 1997. Another "new application" was turned down on 19 December 1997.

Complaint

3.1 In view of his political activities, the author claims that there exist substantial grounds to believe that he would be subjected to torture if he were to be returned to Turkey. His forced return would therefore constitute a violation by Sweden of article 3 of the Convention against Torture.

3.2 Counsel provides a medical report from the Center for Torture and Trauma Survivors in Stockholm indicating that the author suffers from a post-traumatic stress disorder (PTSD). He states that the report neither confirms nor denies that the author has been subjected to physical torture. However, the medical experts underline that the forms of torture which the author claims he was subjected to do not necessarily leave physical marks.

3.3 In support of the author's claim, reference is made to a letter from the UNHCR Regional Office in Stockholm in which it is stated that it is essential to find out whether Turkish asylum-seekers who are returned would be at risk of being suspected of connection to or sympathy with the PKK. If this was found to be the case, they should not be considered as having been able to avail themselves of an internal flight alternative.

State party's observations

4.1 By submission of 20 February 1998, the State party informs the Committee that, following the Committee's request under rule 108, paragraph 9, of its rules of procedure, the National Immigration Board decided to stay the expulsion order against the author while his communication is under consideration by the Committee.

4.2 As regards the domestic procedure, the State party indicates that the basic provisions concerning the right of aliens to enter and to remain in Sweden are found in the 1989 Aliens

Act, as amended on 1 January 1997. There are normally two bodies dealing with applications for refugee status: the National Board of Immigration and the Aliens Appeal Board. In exceptional cases, an application can be referred to the Government by either of the boards; the Government has no jurisdiction of its own in cases not referred to it by either of the boards. Decisions to refer a case to the Government are taken by the boards independently. The State party explains that the Swedish Constitution prohibits any interference by the Government, the Parliament or any other public authority in the decision-making of an administrative authority in a particular case. According to the State party, the National Board of Immigration and the Aliens Appeal Board enjoy the same independence as a court of law in this respect.

4.3 The Aliens Act was amended on 10 January 1997. According to the amended Act (chap. 3, sect. 4, in conjunction with sect. 3), an alien is entitled to a residence permit if he or she has a well-founded fear of being subjected to the death penalty or to corporal punishment or to torture or other inhuman or degrading treatment or punishment. Under chapter 2, section 5 (b), of the Act, an alien who is refused entry can reapply for a residence permit if the application is based on circumstances which have not previously been examined, and if either the alien is entitled to asylum in Sweden or if it will otherwise be in conflict with humanitarian requirements to enforce the decision to refuse entry to or expel the alien. New circumstances cannot be assessed by the administrative authorities ex officio, but only upon application.

4.4 Chapter 8, section 1, of the Act, which corresponds to article 3 of the Convention against Torture, as amended, now provides that an alien, who has been refused entry or who has been ordered expelled may never be sent to a country where there are "reasonable grounds" (previously "firm reasons") to believe that he or she would be in danger of suffering capital or corporal punishment or of being subjected to torture *or other inhuman or degrading treatment or punishment* (text in italics added), nor to a country where he is not protected from being sent on to a country where he would be in such danger.

4.5 As to the admissibility of the communication, the State party submits that it is not aware of the same matter having been presented to another international body of international investigation or settlement. The State party explains that the author can at any time lodge a new application for re-examination of his case to the Aliens Appeal Board, based on new factual circumstances. Finally, the State party contends that the communication is inadmissible as incompatible with the provisions of the Convention.

4.6 As to merits of the communication, the State party refers to the Committee's jurisprudence in the cases of *Mutombo v. Switzerland*[b] and *Ernest Gorki Tania Paez v. Sweden*,[c] and the criteria established by the Committee: first, that a person must personally be at risk of being subjected to torture and second, that such torture must be a necessary and foreseeable consequence of the return of the person to his or her country.

4.7 The State party reiterates that when determining whether article 3 of the Convention applies, the following considerations are relevant: (a) the general situation of human rights in the receiving country, although the existence of a consistent pattern of gross, flagrant or mass violations of human rights is not in itself determinative; (b) the personal risk of the individual concerned of being subjected to torture in the country to which he would be returned; and (c) the risk of the individual being subjected to torture if returned must be a *foreseeable and necessary consequence*. The State party recalls that the mere possibility

[b] Communication No. 13/1993 (CAT/C/12/D/13/1993), Views adopted on 27 April 1994.

[c] Communication No. 39/1996 (CAT/C/18/39/1996), Views adopted on 27 May 1997.

that a person will be subjected to torture in his or her country of origin is not sufficient to prohibit his or her return on the ground of incompatibility with article 3 of the Convention.

4.8 The State party states that it is aware of the serious human rights problems occurring in Turkey, in particular in the south-eastern part of the country. It is a well-known fact that arbitrary arrests, demolitions of whole villages and torture are used in the fight against Kurdish separatists. However, in the State party's view, the situation is not so serious that it constitutes a general obstacle to the deportation of Turkish citizens of Kurdish origin to Turkey. A large part of the population consists of persons of Kurdish origin. While many of them live in the south-eastern part of Turkey, others are scattered throughout other parts of the country where they are completely integrated into the Turkish society in general. It should be stressed that, according to current practice, if an expulsion order is carried out with respect to a Turkish citizen of Kurdish origin, he or she will not be deported from Sweden to the Kurdish areas against his or her will, but to Istanbul or Ankara.

4.9 As regards its assessment of whether or not the author would be personally at risk of being subjected to torture, the State party relies on the evaluation of the facts and evidence made by the National Immigration Board and the Aliens Appeal Board. The facts and circumstances invoked by the author have been examined twice by the National Immigration Board and six times by the Aliens Appeal Board. The Swedish authorities have not considered credible the information which the author has provided about his political activities and about the torture and ill-treatment which he claims to have undergone. When re-examining the facts in the second set of proceedings, the official responsible for the case at the National Immigration Board heard the author in person and was able to make an assessment of the reliability of the information which he submitted orally.

4.10 There are a number of elements in the author's story which give rise to doubts. Firstly, the author has continuously reiterated that his political activities were always known to the Turkish authorities. Still, the author was never brought to trial and was released each time he was apprehended. If the applicant's story in this respect was true, more severe actions on the part of the Turkish authorities would be expected.

4.11 The author's credibility is further diminished by the fact that he has not been able to produce a consistent version of the events leading to his flight from Turkey. In his statement made on 14 September 1990, the author claimed that he had regularly brought PKK leaflets from the Syrian Arab Republic. During the second set of proceedings, this information was changed to the effect that guerilla agents came to the village and left posters. Finally, in the author's submission to the National Immigration Board on 8 June 1997, he claimed that the leaflets/posters were either fetched in Syria or brought to his home.

4.12 Further, the author had also given two completely different versions of how the military authorities discovered his activities. In 1990 he claimed that one of the injured guerillas had informed the military authorities of his activities for the PKK. However, before the National Immigration Board in 1997 he stated that three guerillas had been killed in a clash outside his native village and that the military authorities suspected the villagers and the village elder of helping the PKK. Then he stated that the village elder had told him that the military authorities had found documents on the dead bodies with the names of contacts in the village and that he believed that the author's name was among them. In view of the current situation of armed conflict in which the PKK is involved in the south-eastern part of Turkey, it is questionable whether a PKK member would take the risk of carrying on his person a list of names of sympathizers.

4.13 The Government does not question the fact that the author exhibited certain symptoms of PTSD. He also suffers from depression, panic, feelings of aggression and suicidal ideas. However, the later symptoms stem from his insecure refugee situation and the fact that he

has been staying illegally in Sweden for six years. The medical examinations that have been undertaken have found no physical evidence to confirm that he had previously been subjected to torture. In this context it should also be noticed that in 1991 he claimed that his molars had been knocked out during torture, while in the forensic reports from 1997 it is recorded that the teeth were pulled by the village barber because of toothache.

4.14 The Government states that the author has not made it credible that he has been engaged in political activities that would make him of interest to the Turkish authorities. He has not substantiated that he had been arrested and undergone torture or other forms of ill-treatment. The Government shares the view of UNHCR and the Aliens Appeal Board that no internal place of refuge is available for persons who risk being suspected of being active in or sympathizers of the PKK. However, since the author has not substantiated that he would run any particular risk of being detained and tortured, the Government is of the opinion that if the author wishes to avoid the disturbances that undoubtedly characterize the south-east he has the possibility of staying in another part of the country.

4.15 The State party concludes that, in the circumstances of the present case, the author's return to Turkey would not have the foreseeable and necessary consequence of exposing him to a real risk of torture. An enforcement of the expulsion order against the author would therefore not constitute a violation of article 3 of the Convention.

Counsel's comments

5.1 Regarding the question of admissibility, counsel points out, in her submission dated 12 May 1998, that the procedure for re-examining a case provided for in chapter 2, section 5 (b), of the Aliens Act requires that new circumstances be presented to the Aliens Appeal Board. In the present case there are no new circumstances. Therefore, all domestic remedies have been exhausted.

5.2 Counsel maintains that the Swedish Government has not evaluated the risk the author would face if he were to be expelled to Turkey, but has focused merely on his credibility. Counsel acknowledges that the author has on different occasions given the authorities an inconsistent account of his political activities and his flight; but these inconsistencies are not material and should be viewed in the light of the fact that the author suffers from PTSD. In this context counsel refers to the Committee's jurisprudence in the cases of *Pauline Muzonzo Paku Kisoki v. Sweden* and *Kaveh Yaragh Tala v. Sweden* where it is stated that "complete accuracy is seldom to be expected by victims of torture and that such inconsistencies as may exist in the author's presentation of the facts are not material and do not raise doubts about the general veracity of the author's claims". Counsel reiterates that the author is suffering from PTSD. She states that when asked why he had given different answers to the National Immigration Board in 1997 and during the initial investigative procedure in 1990, the author cried out that although he knew it was important to repeat what he had said almost seven years before, he simply couldn't remember.

5.3 Concerning the inconsistencies, counsel further states that they are not of the magnitude that the State party claims. She states that the author has in fact not given two completely different versions of how the military discovered his activities, since the core elements are the same. Further, counsel draws the attention of the Committee to the fact that the question of how exactly the author's activities were discovered by the military in March 1990 is not really an issue, since by that time the author had already been harassed by the Turkish authorities for several years.

5.4 Counsel further refers to the Swedish Government's remark that no physical medical evidence had been produced to indicate that the author had been subjected to torture. She states that according to the specialists at the Center for Torture and Trauma Survivors in

Stockholm it is not surprising that there are no physical traces on the author's body, since the forms of torture to which the author was subjected do not necessarily leave marks.

5.5 Counsel concludes that the author has presented sufficient evidence that he was politically active in the PKK and that he is well known to the Turkish authorities; that he has been detained, tortured and ill-treated because of his political activities; and finally that the human rights situation in Turkey is such that the group most likely to be exposed to harassment, prosecution and persecution are Kurds suspected of being connected to or being sympathizers of the PKK. She therefore claims that the author's return to Turkey would have the foreseeable and necessary consequence of exposing him to a real risk of being detained and tortured.

5.6 On 29 October 1998, counsel submitted further information to the Committee, indicating that according to a Kurdish solidarity association based in Sweden, of which the author has been a member since 1996, the author is wanted by the Turkish police and the Turkish security service. It is further claimed that the author's family in Turkey has been questioned by the police on three occasions during the past six months about the whereabouts of the author. With respect to this additional information the State party states, in a letter sent to the Committee on 16 November 1998, that it has not altered its position regarding the admissibility and merits of the communication, as described above.

Issues and proceedings before the Committee

6.1 Before considering any claims contained in a communication, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement. The Committee is further of the opinion that all available domestic remedies have been exhausted, in view of the fact that no new circumstances exist on the basis of which the author could file a new application with the Aliens Appeal Board. The Committee finds that no further obstacles to the admissibility of the communication exist.

6.2 The issue before the Committee is whether the forced return of the author to Turkey would violate the obligation of Sweden under article 3 of the Convention not to expel or to return a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

6.3 The Committee must decide, pursuant to paragraph 1 of article 3, whether there are substantial grounds for believing that the author would be in danger of being subject to torture upon return to Turkey. In reaching this decision, the Committee must take into account all relevant considerations, pursuant to paragraph 2 of article 3, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. The aim of the determination, however, is to establish whether the individual concerned would be personally at risk of being subjected to torture in the country to which he or she would return. It follows that the existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute a sufficient ground for determining that a particular person would be in danger of being subjected to torture upon his return to that country; specific grounds must exist that indicate that the individual concerned would be personally at risk. Similarly, the absence of a consistent pattern of gross violations of human rights does not mean that a person cannot be considered to be in danger of being subjected to torture in his or her specific circumstances.

6.4 The Committee is aware of the serious human rights situation in Turkey. Reports from reliable sources suggest that persons suspected of having links with the PKK are frequently

tortured in the course of interrogations by law enforcement officers and that this practice is not limited to particular areas of the country. In this context, the Committee further notes that the Government has stated that it shares the view of UNHCR, i.e. that no place of refuge is available within the country for persons who risk being suspected of being active in or sympathizers of the PKK.

6.5 The Committee recalls that, for the purposes of article 3 of the Convention, the individual concerned must face a foreseeable, real and personal risk of being tortured in the country to which he is returned. The Committee wishes to point out that the requirement of necessity and predictability should be interpreted in the light of its general comment on the implementation of article 3 which reads: "Bearing in mind that the State party and the Committee are obliged to assess whether there are substantial grounds for believing that the author would be in danger of being subjected to torture were he/she to be expelled, returned or extradited, the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. However, the risk does not have to meet the test of being highly probable" (A/53/44, annex IX, para. 6).

6.6 The Committee notes the medical evidence provided by the author. The Committee notes in particular that the author suffers from a post-traumatic stress disorder and that this has to be taken into account when assessing the author's presentation of the facts. The Committee notes that the author's medical condition indicates that the author has in fact been subjected to torture in the past.

6.7 In the author's case, the Committee considers that the author's family background, his political activities and affiliation with the PKK, his history of detention and torture, as well as indications that the author is at present wanted by Turkish authorities, should be taken into account when determining whether he would be in danger of being subjected to torture upon his return. The Committee notes that the State party has pointed to contradictions and inconsistencies in the author's story and further notes the author's explanations for such inconsistencies. The Committee considers that complete accuracy is seldom to be expected by victims of torture, especially when the victim suffers from post-traumatic stress syndrome; it also notes that the principle of strict accuracy does not necessarily apply when the inconsistencies are of a material nature. In the present case, the Committee considers that the presentation of facts by the author does not raise significant doubts as to the trustworthiness of the general veracity of his claims.

6.8 In the circumstances, the Committee considers that substantial grounds exist for believing that the author would be in danger of being subjected to torture if returned to Turkey.

6.9 In the light of the above, the Committee is of the view that the State party has an obligation to refrain from forcibly returning the author to Turkey, or to any other country where he runs a real risk of being expelled or returned to Turkey.

[Done in English, French, Russian and Spanish, English being the original.]

6. Communication No. 103/1998

Submitted by: S.M.R. and M.M.R. (Names withheld) [represented by counsel]

Alleged victim: The authors

State party: Sweden

Date of communication: 5 November 1997

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 5 May 1999,

Having concluded its consideration of communication No. 103/1998, submitted to the Committee against Torture under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the authors of the communication, their counsel and the State party,

Adopts its Views under article 22, paragraph 7, of the Convention.

1. The authors of the communication are S.M.R., her husband M.M.R. and their two children. The authors are Iranian citizens currently residing in Sweden, where they are seeking refugee status. S.M.R. and M.M.R. claim that they would risk imprisonment and torture upon return to the Islamic Republic of Iran and that their forced return to that country would therefore constitute a violation by Sweden of the Convention. They are represented by counsel.

Facts as presented by the authors

2.1 The authors state that S.M.R. has been an active member of the illegal organization the Mujahedin. Because of her political activities she has been imprisoned twice by the Iranian authorities. She was first arrested in 1982 and spent four years in the Evin-Ghezelhesar prison. She was released in May 1986 when the authorities revised old sentences. About the time of her release the Mujahedin launched a military offensive, and she was arrested again in August 1986 together with other activists who were seen as threats by the Iranian authorities. She was released in May 1990 due to lack of evidence, but she had to report regularly to the authorities for the following six months.

2.2 S.M.R. was ill-treated and tortured in prison, especially during her first imprisonment. She states that she was beaten on the soles of her feet and that she was flogged on two occasions. As a result of the flogging she was unconscious and suffered renal haemorrhage. She was treated in a hospital for two days before she was sent back to prison. She also states that she was subjected to a fake execution.

2.3 In 1991 S.M.R. resumed her work for the Mujahedin. She was a member of a group of four politically active women who produced leaflets for the Mujahedin in her home, where they met three times a week. The reason why the women always met in S.M.R.'s home was that her husband, because of his profession, had a typewriter which the women used to produce the leaflets. The authors state, however, that M.M.R. was unaware of the political activities of his wife.

2.4 S.M.R. and her children arrived in Sweden on 21 July 1995 on a valid passport, to attend the marriage of a relative. She states that at that time she intended to return to the Islamic Republic of Iran. While in Sweden she learned that her husband, who was not politically active, had been arrested by the Iranian security police in August 1995 and interrogated about the political activities of his wife. The police had informed him that the other women belonging to the political group in which S.M.R. was active had been arrested and that one of the women had revealed his wife's identity. The police had also searched the family's house and confiscated the typewriter which had been used to produce the leaflets. S.M.R. decided not to return to the Islamic Republic of Iran, where she claims she risks being imprisoned and tortured again.

2.5 S.M.R. and her two children applied for asylum on 30 November 1995. Her application was rejected by the National Immigration Board on 30 January 1996. On 25 November 1996, the Aliens Appeal Board turned down her appeal. Following an application by S.M.R., the Aliens Appeal Board decided, on 5 March 1997, not to expel her pending its decision regarding the asylum claim of her husband.

2.6 After leaving the Islamic Republic of Iran illegally with the help of smugglers, M.M.R. arrived in Sweden on 6 November 1996 and immediately applied for asylum. He was later told by his mother in the Islamic Republic of Iran that the Swedish police had informed the Iranian authorities about his illegal departure from the country. He would now risk imprisonment upon his return to his country.

2.7 The National Immigration Board rejected M.M.R.'s asylum claim on 23 April 1997. On 27 October 1997, the Aliens Appeal Board dismissed his appeal. Following the rejection of M.M.R.'s asylum claim, the Aliens Appeal Board cancelled the stay of the deportation order against S.M.R. and her children.

Complaint

3.1 In view of the fact that S.M.R. has previously been imprisoned and tortured, and that her recent political activities have become known to the Iranian Government, the authors claim that there exist substantial grounds for believing that she, her husband and their children would be subjected to torture if they were returned to their country of origin. Their forced return would therefore constitute a violation by Sweden of the Convention.

3.2 The authors draw the attention of the Committee to the fact that neither the National Immigration Board nor the Aliens Appeal Board has questioned that S.M.R. had been active in the Mujahedin organization and that she had previously been imprisoned and tortured.

Observations by the State party

4.1 By its submission of 21 April 1998, the State party informed the Committee that, following the Committee's request under rule 108, paragraph 9, of its rules of procedure, the National Immigration Board had decided to stay the expulsion order against the authors while their communication is under consideration by the Committee.

4.2 The State party explained the domestic procedure applicable to the determination of refugee status. It stressed that, in accordance with the Aliens Act, an alien may never be sent to a country where there are reasonable grounds for believing that he or she would be in danger of suffering capital or corporal punishment or of being subjected to torture or other inhuman or degrading treatment or punishment, nor to a country where he/she is not protected from being sent on to a country where he/she would be in such danger. An alien who is refused entry can reapply for a residence permit if the application is based on circumstances which have not previously been examined in the case and if either the alien is entitled to asylum in Sweden or if it will otherwise be in conflict with humanitarian requirements to enforce the decision on refusal of entry or expulsion.

4.5 Regarding the admissibility of the communication, the State party submits that it is not aware of the same matter having been presented to another international instance of investigation or settlement. The State party explains that the authors can at any time file a new application for re-examination of their case with the Aliens Appeal Board, based on new factual circumstances. Finally, the State party contends that, with reference to what it says concerning the merits of the case, the communication should be considered inadmissible as incompatible with the provisions of the Convention.

4.6 As to the merits of the communication, the State party refers to the Committee's jurisprudence in the cases of *Mutombo v. Switzerland*[a] and *Tapia Paez v. Sweden*,[b] and the criteria established by the Committee with respect to article 3 of the Convention, first, that a person must personally be at risk of being subjected to torture and, second, that such torture must be a necessary and foreseeable consequence of the return of the person to his or her country.

4.7 The State party reiterates that when determining whether article 3 of the Convention applies, the following considerations are relevant: (a) the general situation of human rights in the receiving country, although the existence of a consistent pattern of gross, flagrant or mass violations of human rights is not in itself determinative; (b) the personal risk of the individual concerned of being subjected to torture in the country to which he would be returned; and (c) the risk of the individual being subjected to torture as a foreseeable and necessary consequence of return. The State party recalls that the mere possibility that a person will be subjected to torture in his or her country of origin is not sufficient grounds for his or her return to be incompatible with article 3 of the Convention.

4.8 The State party is aware of human rights violations taking place in the Islamic Republic of Iran, including extrajudicial and summary executions and disappearances, as well as widespread use of torture and other degrading treatment.

4.9 As regards its assessment of whether or not the author would be personally at risk of being subjected to torture if returned to the Islamic Republic of Iran, the State party relies on the evaluation of the facts and evidence made by the National Immigration Board and the Aliens Appeal Board. Neither found any reason to question that S.M.R. had been politically active for the Mujahedin and that she had been imprisoned in the 1980s. However, the Swedish authorities have found that some elements provided by the authors regarding S.M.R.'s recent political activities and the circumstances relating to her departure from the Islamic Republic of Iran raise doubts as to their credibility.

4.10 In its decision of 30 January 1996, the National Immigration Board noted that S.M.R. had been released from prison in 1990 for lack of evidence. As to her political activities after her release, the Board found it unlikely that the political group she claimed she was a member of held meetings and produced leaflets three times a week in her house without her husband's knowledge. The Board also found it improbable that she was wanted by the Iranian authorities because a typewriter had been found in her home. As to the circumstances of her departure, the Board noted that S.M.R. had been able to obtain a national passport in 1993 and that she had left her country of origin legally. This is an additional indication that she was not of interest to the Iranian authorities. In addition, the Board pointed out that she had waited four months in Sweden before applying for asylum.

4.11 On 25 November 1996 the Aliens Appeal Board rejected the appeal of S.M.R. and her children, adding to the findings of the National Immigration Board that she had not applied for asylum until three months after she allegedly learned that the authorities were looking for her in the Islamic Republic of Iran. In the Board's view, her explanation that she did not, until that point, realize the proportions of the authorities' interest in her was not convincing. The Board stated that the delay alone gave reason to doubt her need of protection in Sweden. The Board further stated that not only had S.M.R. been able to obtain a national passport in 1993, but she had also been able to leave the country several times, which shows that she was not of particular interest to the Iranian authorities. The Board further found not credible her statement that she had travelled to the Syrian Arab Republic

[a] Communication No. 13/1993 (CAT/C/12/D/13/1993). Views adopted on 27 April 1994.

[b] Communication No. 39/1996 (CAT/C/18/39/1996). Views adopted on 7 May 1997.

at the request of the authorities in order to prove that she was a true Muslim. The Board considered that this was rather an attempt to explain the departure stamps in her passport.

4.12 M.M.R.'s application for asylum was rejected by the National Immigration Board on 23 April 1997. The Board noted that his grounds for requesting asylum were connected to his wife's political activities in the Islamic Republic of Iran, activities which had not been considered of such a nature as to justify her protection in Sweden. M.M.R.'s claim that he risked imprisonment for having left his country without a visa was not regarded as grounds for granting him protection.

4.13 The Aliens Appeal Board turned down his appeal on 27 October 1997. The Board noted that in September 1996, after the alleged detention in August 1995, he obtained a valid passport and permission to leave the country. Therefore, the Board concluded, he was not at that time of special interest to the Iranian authorities. The Board also noted that, when entering Sweden, he had stated that he had not experienced any problems of a political nature in the Islamic Republic of Iran.

4.14 The State party reiterates that it does not question S.M.R.'s statement in respect of imprisonment and ill-treatment in the past. What is called into question is whether S.M.R. has been politically active since 1991 in the manner claimed by her and therefore at risk of being tortured if she returns to Iran at this time. In this context, the State party points out several circumstances and elements in the authors' account which give rise to doubts as to S.M.R.'s alleged political activities during recent years.

4.15 Firstly, the State party asserts that, according to reliable information available to the Government, the Mujahedin has for many years been operating from outside the Islamic Republic of Iran only. Production and distribution of leaflets for the Mujahedin within the country consequently does not occur. Due to this circumstance alone, S.M.R.'s statement concerning her political activities is not credible.

4.16 The State party also underlines the findings of the National Immigration Board and the Aliens Appeal Board as to the authors' possession of passports. S.M.R. was in possession of a valid national passport and visa when entering Sweden. She obtained a passport in 1993 and had, according to the stamps in it, left Iran on several occasions before travelling to Sweden. In the initial investigation following her application for asylum, S.M.R. stated that she had turned in her passport to the authorities in 1995 in order to have her youngest child registered in it. She further stated that when she applied for a new passport she was requested by the authorities to travel to Syria in order to prove that she was a true Muslim. The State party finds, in accordance with the findings of the Boards, that this statement is not credible but rather a construction devised to explain the departure stamps in her passport. These circumstances contradict the assertion that she was of special interest to the Iranian authorities at the time of her departure. The State party also underlines the facts that M.M.R., after he had allegedly been detained in August 1995, stayed in the Islamic Republic of Iran for more than a year, that he had obtained a valid passport and that he declared, when entering Sweden, that he did not have any problems of a political character in his country of origin.

4.17 Finally, the State party draws the attention of the Committee to the fact that S.M.R. has not been able to give any reasonable explanation as to why she waited for more than four months before applying for asylum in Sweden. The State party maintains that her explanation is not convincing, especially as she alleged that her husband was arrested two weeks after her arrival in Sweden.

4.18 In the State party's view the decisive element in this case, in making the risk assessment under article 3 of the Convention, is the credibility that can be attached to the

statements made by the authors of the communication. In view of the circumstances recounted above, the State party considers that S.M.R. and M.M.R. have not substantiated the claim that they would run any particular personal risk of being detained and tortured if they were to return to the Islamic Republic of Iran.

4.19 The State party concludes that, in the circumstances of the present case, the authors' return to the Islamic Republic of Iran would not have the foreseeable and necessary consequence of exposing them to a real risk of torture. An enforcement of the expulsion order against the authors would therefore not constitute a violation of article 3 of the Convention.

Counsel's comments

5.1 Counsel recalls that the State party does not in any way question that S.M.R. has been imprisoned and tortured in the past. He also points out that the State party is aware of the serious human rights violations occurring in the Islamic Republic of Iran, including the widespread use of torture, and concludes that there are substantial risks that S.M.R. would face torture again if returned to the country.

5.2 Counsel further argues that the act of deporting a person to a country to which she fears to return owing to having previously been tortured, is in itself an act of torture or other cruel, inhuman or degrading treatment or punishment.

5.3 Finally, counsel refers to a certificate submitted by a psychiatrist at the Swedish Red Cross centre for tortured refugees in Stockholm, according to which S.M.R.'s statements regarding imprisonment and torture clearly are based on her own personal experiences. The psychiatrist further states that in his view, S.M.R.'s account of how, after her release from prison in 1990, she pursued her political activities and her fear of being persecuted by the Iranian authorities are credible and genuine.

Committee's decision on admissibility

6.1 At its twenty-first session, the Committee considered the admissibility of the communication. It ascertained that the same matter had not been and was not being examined under another procedure of international investigation or settlement, and considered that all available domestic remedies had been exhausted in view of the fact that no new circumstances existed on the basis of which the authors could file a new application with the Aliens Appeal Board. Accordingly, it decided that the communication was admissible.

6.2 The Committee noted the information given by the State party that the Immigration Board had stayed the enforcement of the expulsion order against the authors, pending the Committee's final decision on the communication.

6.3 The Committee further noted that both the State party and the author's counsel had provided observations on the merits of the communication, and that the State party had requested the Committee, if it were to find the communication admissible, to proceed to the examination of the merits of the communication. Nevertheless, the Committee considered that the information before it was not sufficient to enable it to adopt its Views at that stage. Accordingly, it decided to request both parties to make additional submissions within three months, with a view to examining the merits of the communication at the Committee's twenty-second session.

6.4 In particular, the Committee decided to request from the authors' counsel additional information about the nature of S.M.R.'s political activities after 1990 and the current situation of the other members of the political group to which she belonged. Likewise, the Committee requested clarifications from the State party and the authors' counsel as to the

circumstances relating to the authors' departure from the Islamic Republic of Iran and entry into Sweden, as well as their obtaining of passports. Clarifications were also requested regarding the authors' statement that Swedish police authorities had informed the Iranian authorities about the illegal departure of M.M.R. from the country.

6.5 Under rule 110, paragraph 3, of the rules of procedure, the Committee further requested the State party not to return the authors to Iran while their communication is under consideration by the Committee.

Additional information submitted by the State party

7.1 In response to the Committee's request regarding the circumstances of the authors' departure from the Islamic Republic of Iran, entry into Sweden and obtaining of passports, the State party submits that the information it provided is based on the authors' own statements to Swedish immigration authorities. S.M.R.'s passport was issued on 10 May 1993 with validity until 10 May 1996. She applied for a visa in January 1995 in order for her and her two children to visit her brother in Sweden. They were granted entry visas valid for 30 days with departure from Sweden not later than 17 September 1995. She arrived in Sweden on 21 July 1995.

7.2 S.M.R. has stated that she obtained her passport without difficulty. In March 1995 she returned it to the authorities in order to have her youngest child registered on it. After being informed that her name resembled the name of a person who was not permitted to leave the country, she was requested to report to the prosecution authority. The prosecution authority discovered that her name was miswritten and decided not to return her passport to her. When she applied for a new passport the authorities made it a condition that she first travel to Syria. The trip was arranged by the authorities as a test in order to prove that she was a true Muslim supporting the regime. The authorities made it an additional condition that she turn in the certificate of registration of title of her house before the trip. Her passport was returned a week before she travelled to Syria with her husband and children.

7.3 The State party maintains that S.M.R.'s statement concerning her trip to Syria is not credible, but rather an attempt to explain the departure stamps in her passport. It notes that her husband has not mentioned anything about a trip to Syria, nor has he mentioned anything about a passport he must have been in possession of in order to travel to Syria.

7.4 According to reliable sources, a valid passport and an exit visa are required in order to be allowed to leave the Islamic Republic of Iran. Persons convicted of a serious crime or under suspicion of such a crime or under surveillance for other reasons are not allowed to leave the country. Since S.M.R. had no difficulties in obtaining a passport as well as a visa and leaving the country, it is unlikely that she was of any special interest to the Iranian authorities at the time of her departure. On the other hand, her husband, who was allegedly arrested and interrogated, was released after a week and stayed in the country for more than a year thereafter. Further, he obtained a valid passport, issued on 30 September 1996, and a permit to leave the Islamic Republic of Iran. Obviously, the Iranian authorities had no special interest in him either at the time of his departure in 1996.

7.5 M.M.R. arrived in Sweden without an entry visa. In the initial interrogation following his application for asylum he stated that he had obtained his passport without any difficulties, that he had not experienced any problems of a political nature in the Islamic Republic of Iran and that his intention was to reunite with his wife and children. He also stated that he had not applied for an entry visa because he was convinced that he would not obtain one. Therefore, he paid a smuggler who bought him a ticket and helped him to pass through the gates at the airport in Tehran.

7.6 The State party contests M.M.R.'s statement that the Swedish police informed the Iranian authorities about his illegal departure from Iran. However, due to M.M.R.'s lack of a valid entry visa, the Swedish police authorities informed Iran Air of his arrival in Sweden. That was done in accordance with provisions of the Aliens Act aimed at inducing carriers to make thorough checks of passengers' travel documents in order to avoid their arrival in Sweden undocumented.

7.7 The State party has obtained information according to which a person who returns to the Islamic Republic of Iran after leaving the country illegally risks a fine and can be taken into custody for three days at the most. The State party has, however, no information indicating that Iranian citizens who have been expelled from Sweden have been subjected to ill-treatment upon their return to the country. The State party calls into question whether the Iranian authorities would consider M.M.R.'s departure as illegal, in view of the fact that he was holding a valid passport, he passed the departure controls and was allowed to travel by Iran Air.

7.8 Finally, the State party indicates that the enforcement of the expulsion order against the authors has been stayed pending the Committee's final decision on the matter.

Additional information submitted by counsel

8.1 In response to the Committee's request for clarifications regarding the nature of S.M.R.'s political activities after 1990, counsel states that she was in charge of typing texts that she received from the leader of her group. Once typed, the texts were copied and distributed by others in the form of leaflets. The group had four members and they met two or three times a week when M.M.R. was not at home. These activities continued until S.M.R. left the Islamic Republic of Iran. When she left for Sweden her intention was to return and continue her political activities. While in Sweden S.M.R. has continued to work for her organization by participating in administrative tasks and the preparation of a newspaper. She has also taken part in demonstrations.

8.2 S.M.R. has had no contacts with the members of her group in the Islamic Republic of Iran. She has nevertheless been informed by her organization that they have been arrested and that the leader was sentenced to 10 years of imprisonment. When M.M.R. was arrested he was shown a picture of the leader and asked if he recognized her. The other members of the group were not mentioned to him.

8.3 As to the clarifications concerning S.M.R.'s passport, counsel states that she applied for a passport three years after her release from prison. She had no intention of using it but she wanted to check whether it was possible for her to obtain one. According to the law, she should have been interrogated at court after her application. In fact she was not, and the passport was sent to her within 24 hours. When S.M.R. requested to have her child registered in the passport the authorities found that she was not entitled to have one and was forbidden to leave the country. She had to go to a court, where she was questioned about her activities and her reasons for leaving the country. She replied that she wanted to attend her brother's wedding. She was then told that somebody had to be responsible for her and that her first trip abroad had to be to an Islamic country. For that reason she travelled to Syria with her husband and child. In order to obtain a permit to leave for Sweden she had to put up the family's house as guarantee of her return.

8.4 M.M.R. obtained his passport without difficulty. He had not had any problems with the authorities for a long time. He was arrested and released after one to two weeks, since he had not committed any crime. At that time he did not believe that his wife was in Sweden; he therefore suggested that the authorities ask the travel agent where she had gone. Upon his leaving the country he paid a Pakistani citizen to help him to enter the plane without

being checked. The airline is responsible for checking that passengers have valid visas; this might be the reason why the Swedish authorities contacted the Iranian authorities. Iranian revolutionary guards visited M.M.R.'s mother and asked her about his leaving the country without a visa. She replied that she did not know anything about it.

Examination of the merits

9.1 The Committee has considered the communication in the light of all the information made available to it by the parties, in accordance with article 22, paragraph 4, of the Convention.

9.2 The issue before the Committee is whether the forced return of the authors to Iran would violate the obligation of Sweden under article 3 of the Convention not to expel or to return a person to another State where there are substantial grounds for believing that he/she would be in danger of being subjected to torture.

9.3 The Committee must decide, pursuant to paragraph 1 of article 3, whether there are substantial grounds for believing that the authors would be in danger of being subjected to torture upon return to the Islamic Republic of Iran. In reaching this decision the Committee must take into account all relevant considerations, pursuant to paragraph 2 of article 3, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. The aim of the determination, however, is to establish whether the individuals concerned would be personally at risk of being subjected to torture in the country to which they would return. The existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute a sufficient ground for determining that a particular person would be in danger of being subjected to torture upon his return to that country; specific grounds must exist indicating that the individual concerned would be personally at risk. Similarly, the absence of a consistent pattern of gross violations of human rights does not mean that a person cannot be considered to be in danger of being subjected to torture in his or her specific circumstances.

9.4 In the case under consideration the Committee notes the State party's statement that the risk of torture should be a "foreseeable and necessary consequence" of an individual's return. In this respect the Committee recalls its previous jurisprudence[c] that the requirement of necessity and predictability should be interpreted in the light of its general comment on the implementation of article 3, which reads: "Bearing in mind that the State party and the Committee are obliged to assess whether there are substantial grounds for believing that the author would be in danger of being subjected to torture were he/she to be expelled, returned or extradited, the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. However, the risk does not have to meet the test of being highly probable" (A/53/44, annex IX, para. 6).

9.5 The Committee does not share the view of the National Immigration Board that it is unlikely that S.M.R. held regular meetings at her home without her husband's knowledge. Furthermore, the Committee has no reasons to question S.M.R.'s credibility regarding her past experiences of detention, her political activities and the way in which she obtained a passport. However the Committee considers, on the basis of the information provided, that the political activities that S.M.R. claims to have carried out after 1991, inside and outside the Islamic Republic of Iran, are not of such a nature as to conclude that she risks being tortured upon her return. The Committee notes, in particular, that after M.M.R.'s release he was not further questioned about his wife's activities and whereabouts, neither was he molested by the Iranian authorities. Moreover, there is no indication that an arrest order has

[c] Communication No. 101/1997 (CAT/C/21/D/101/1997), Views adopted on 20 November 1998.

been issued against S.M.R. Counsel submits that the other members of her group were arrested and that the head of the group was sentenced to imprisonment. No information is provided, however, as to the grounds for her conviction and there is no indication that the women were subjected to torture or ill-treatment.

9.6 The Committee further considers that the fact that M.M.R. left the Islamic Republic of Iran without a visa to enter Sweden does not constitute an additional argument to conclude that the authors risk being tortured if they return. No evidence has been provided to the Committee that such an act is punished in the Islamic Republic of Iran with imprisonment, let alone torture.

9.7 The Committee notes with concern the numerous reports of human rights violations, including the use of torture, in the Islamic Republic of Iran, but recalls that, for the purposes of article 3 of the Convention, the individual concerned must face a foreseeable, real and personal risk of being tortured in the country to which he is returned. In the light of the foregoing, the Committee deems that such a risk has not been established.

9.8 On the basis of the above considerations the Committee considers that the information before it does not show substantial grounds for believing that the authors run a personal risk of being tortured if they return to the Islamic Republic of Iran.

10. The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, concludes that the decision of the State party to return the authors to the Islamic Republic of Iran would not constitute a breach of article 3 of the Convention.

[Done in English, French, Russian and Spanish, the English text being the original version.]

7. Communication No. 104/1998

Submitted by: M.B.B. (name withheld)

Alleged victim: The author

State party: Sweden

Date of communication: 12 December 1997

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 5 May 1999,

Having concluded its consideration of communication No. 104/1998, submitted to the Committee against Torture under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the author of the communication and the State party,

Adopts its Views under article 22, paragraph 7, of the Convention.

1. The author of the communication is M.B.B., an Iranian national born in 1965, at present seeking asylum in Sweden. He claims that he risks being tortured and executed if he is forced to return to the Islamic Republic of Iran. No article of the Convention is specifically invoked in the communication. The author is not represented by counsel.

Facts as presented by the author

2.1 The author states that his father is an orthodox Iranian Muslim and a supporter of the Iranian regime. Through his influence the author was drafted by the Iranian Revolutionary

Guards (Pasdaran) and fought for three years in the front lines. While working as a revolutionary guard, the author also had a normal civil job as a mechanic in Isfahan, in order to conceal his involvement with the Pasdaran from his family. He was issued with an identity card as a member of the National Guard.

2.2 The author states that his situation became very difficult when he refused to perform certain tasks assigned to him. For that reason he decided to leave for Sweden, where his mother and stepfather were living. He left the country on a valid passport, which he obtained by paying a large amount of money, and a tourist visa that his stepfather helped him to obtain. He arrived in Sweden on 26 October 1995 in poor psychological condition. On 10 January 1996, he applied for asylum. His application was dismissed by the Swedish Board of Immigration on 5 September 1996. The Aliens Appeal Board turned down his appeal on 21 April 1997.

2.3 In June 1996, the author converted to Christianity. Members of his family who are still living in the Islamic Republic of Iran informed him that the Pasdaran had issued a warrant of arrest and that the Supreme Court had issued an order of execution against him.

Complaint

3.1 In view of his past involvement with the Pasdaran and his conversion to Christianity the author fears that he will be subjected to torture and executed upon his return to the Islamic Republic of Iran.

State party's observations

4.1 On 19 January 1998 the Committee, acting through its Special Rapporteur for new communications, transmitted the communication to the State party for comments and requested the State party not to expel or deport the author to the Islamic Republic of Iran while his communication was under consideration by the Committee. In a submission on 29 June 1998 the State party informed the Committee that, on 21 January 1998, the Swedish Immigration Board had decided to stay the enforcement of the expulsion until further notice, pending the Committee's final decision on the matter.

4.2 With respect to the admissibility of the communication, the State party states that it is not aware of the present matter having been or being the object of any other procedure of international investigation or settlement. It also states that chapter 2, section 5 (b), of the Aliens Act provides for a re-examination of the permit issue. A new request for a residence permit may be lodged with the Aliens Appeals Board at any time. Such a request must always be considered by the Board, provided that there are new circumstances that could call for a different decision. Finally, the State party, with reference to its submission on the merits, maintains that the communication should be considered inadmissible as being incompatible with the provisions of the Convention.

4.3 As for the merits, the State party provides the following information and assessment.

4.4 The author submitted an application for residence and a work permit to the Swedish Embassy in Tehran on 18 May 1995. On that occasion he indicated that he was a "retired National Pasdar Guard". He entered Sweden on 26 October 1995 on a visa valid for 90 days and travelled with a valid Iranian passport. He did not apply for asylum until 10 January 1996. His spouse and three children remain in the Islamic Republic of Iran.

4.5 During the initial investigation following the author's first request for asylum he stated that he had worked at a "Sepah-Pasdaran" and his duties were to spy on the anti-revolutionary forces in Iranian Kurdistan. In the course of his work he was given training in methods of torture, and he mistreated people. He also took part in executing

people without trial. Since he was not considered mentally strong enough to carry out torture he was ordered to obtain information about opponents of the regime and to hand it over to the authorities. He also stated that he had not been able to tell his spouse and children about his work and that he left the Islamic Republic of Iran because he could not bear his work any longer. Since members of the military are not allowed to have passports legally, he obtained one through bribery. He did not know anything about an exit permit. He converted to Christianity on 23 July 1996. Finally, he said that if he returned home he would be in danger of execution.

4.6 On 5 September 1996 the National Immigration Board rejected the author's application for asylum. The Board noted that he had travelled on a valid Iranian passport and exit permit, which means that at the time of his departure he was not of particular interest to the Iranian authorities. The Board considered that this fact was further supported by the author's earlier application for a residence permit, in which he had stated that he no longer worked for the Pasdaran. The Board found it extremely unlikely that he would be allowed to leave the country if, at that point in time, he was active in the military service in the way he described. The information on how he bribed a person at the airport at the time of his departure was deemed not to be credible.

4.7 Moreover, the Board pointed out that the author waited over two months before applying for asylum, which is an indication that he did not regard his situation in his home country as particularly serious. Consequently, the Board did not find his claim that he runs the risk of arousing the authorities' special interest on his return to be credible. The Board concluded that there were no reasons to believe that by returning to his home country, the author would risk exposure to the kind of persecution or harassment that would constitute grounds for asylum. The Board did not find any other reason for granting a residence permit. It considered that the kind of activities that the author said he took part in, *inter alia*, executing people without trial, are crimes against humanity as referred to in article 1 F of the 1951 Convention relating to the Status of Refugees. Regardless of any judgement about his credibility, such a circumstance is sufficient reason to refuse asylum, in accordance with the 1951 Convention.

4.8 In his appeal to the Aliens Appeals Board the author maintained that he had been a so-called special agent. He submitted copies of two identity cards to the police in Boras in January 1996. One of the cards, which was issued by a competent authority, shows that he had terminated his service as a special agent, although in fact he had not. The second card shows that he was still employed and active as a special agent. This card was exclusively intended for national use. He further stated that in the Islamic Republic of Iran people who have opposed the regime, been drug traffickers or carried on other undesired activities may be "got rid of" without a trial and that he used to receive orders from his superiors that a certain undesired person should disappear. From 1988 to 1992, he was part of a group within Sepha which carried out activities in that context in Kurdistan and Khozestan. During the years from 1992 to 1996, he underwent further training at a school of torture. However, he did not himself inflict torture on prisoners but only had to "watch". On some 40 occasions he executed punishment in the form of whipping. By means of substantial bribes to a member of Sepha, he was able to leave his country with a valid passport, despite the fact that he was not entitled to leave the country.

4.9 The author further contended that the assertion in the decision of the National Immigration Board that he had retired was not correct, since he was too young to retire. He had waited for two months before applying for asylum after his arrival in Sweden because he was very depressed. However, he contacted the police as soon as he began to feel better. For many years he had felt a strong attraction to Christianity. In Sweden, he attended tuition at St. Andrews Church in Gothenburg and converted to Christianity on 23 June 1996. If it

should come to the knowledge of the Iranian authorities that he had converted to Christianity, it would mean certain death. He is very concerned about his children and his spouse since he does not know what their situation is. The family may be punished because of his desertion.

4.10 On 21 April 1997, the Aliens Appeals Board turned down his appeal. The Board stated that it could be seen from the author's passport that he underwent the usual passport control in Tehran airport, which meant that he was not of particular interest to the authorities at the time of his departure. The Board also noted that persons who leave from Tehran airport undergo strict controls. The claim that he was only able to leave with the aid of bribes was therefore not deemed reasonable. At the same time the Board did not find the claim that he was active within the armed forces and therefore under a prohibition to travel at the time of his departure to be credible.

4.11 The Board also pointed out that the author waited for more than two months after entering Sweden before applying for asylum which suggests that he did not feel a great need for protection when he arrived. Regarding his conversion, the Board considered that a convert does not run any significant risk of harassment by the authorities as a result.

4.12 On 30 October 1997 the Aliens Appeals Board examined a new application for asylum filed by the author, with which he submitted a document, dated 11 June 1996, which he claimed had recently been given to him by an acquaintance and had been obtained through bribes. He asserted, *inter alia*, that the document had been drawn up by a "prosecutor at the revolutionary court centre in the Islamic Republic of Iran" and proved that the author was wanted in his country of origin. This was a later development since he was clearly not wanted by the police when he left.

4.13 The author subsequently submitted a copy of a judgement dated 15 July 1996 which he claimed had been drawn up by the supreme military tribunal. He stated that the crimes he is guilty of are that he left his position as a security officer in Sepah, joined groups that oppose Islam, endangered the security of the State and unlawfully left the country. He stated that he had received the document in question by post from the Islamic Republic of Iran.

4.14 On 10 July 1997, the Board decided to stay the enforcement of the refusal of entry decision. It then made arrangements for an investigation of the judgement through the Swedish Embassy in Tehran.

4.15 In a statement dated 4 September 1997, the Embassy concluded that the judgement and the document from the prosecution authority were clear forgeries. After having been informed of the Embassy's communication, the author wrote to the Board insisting that he had given truthful information that he was not aware that the documents were not genuine. He also insisted that he risked capital punishment if he returns.

4.16 In its decision of 30 October 1997 the Board did not find cause to make any other assessment than the one which was presented in the Embassy's communication. In an overall assessment of the material presented together with what had previously emerged in the case, the Board found that the circumstances did not confirm that the author was in need of protection under the Aliens Act. Furthermore, the Board did not find grounds to consider that an enforcement of the expulsion would be contrary to humanitarian requirements. It therefore rejected the new application.

4.17 The State party argues that in determining whether article 3 of the Convention applies in a particular case the following considerations are relevant: (a) the general situation of human rights in the receiving country, although the existence of a consistent pattern of gross, flagrant or mass violations of human rights is not in and of itself determinative; (b) the individual concerned must be personally at risk of being subjected to torture in the country

to which he would be returning; and (c) "substantial grounds" in article 3 (1) means that the risk of the individual being tortured if returned is a "foreseeable and necessary consequence".

4.18 The State party is aware that the Government of the Islamic Republic of Iran is reported to be a major abuser of human rights. It leaves it to the Committee to decide whether there exists at present a consistent pattern of gross, flagrant or mass violations of human rights in the country.

4.19 Regarding the personal risk of being subjected to torture in the Islamic Republic of Iran the State party contends that several provisions in the Aliens Act reflect almost exactly the principle laid down in article 3 of the Convention. In applying article 3, therefore, the Committee is carrying out virtually the same test as the Swedish authorities. In making this test it should be taken into account that a mere possibility of torture cannot in itself be sufficient to constitute a violation of article 3 of the Convention. The risk must be substantiated with regard to the circumstances and the asylum-seeker's personal conditions insofar as they can be objectively certified.

4.20 In the present case the Swedish authorities have clearly found no substantial grounds for believing that the author would be at risk of being subjected to torture upon his return to Iran. The State party shares the assessment made by the Swedish authorities in this respect and would like to point out certain circumstances which are considered to be of special importance in this context.

4.21 Firstly, the author travelled from Iran on a valid Iranian passport and with an exit permit. It may be seen from the author's passport that he underwent the usual passport control in connection with his departure from Tehran airport. In the light of the Government's knowledge of departure controls at Tehran airport, this means that he was not of particular interest to the authorities at the time of his departure. This conclusion is further supported by the author's earlier application for a residence permit in which he had stated that he no longer worked for the "Pasdaran". It is extremely unlikely that he would be allowed to leave if at that point he was active in the military service in the way he described. Special permission issued by the Iranian authority concerned is required for military personnel to leave. Thus, the claim that he was active within the armed forces and therefore under a prohibition to travel at the time of his departure are not credible. These circumstances conflict with the assertion that the author is of particular interest to the Iranian authorities.

4.22 Finally, the communication from the Embassy of Sweden in Tehran clearly shows that the document submitted by the author in the form of a judgement by the Supreme Court and a search warrant from the prosecution authorities were manifest forgeries. This too gives cause for doubt and undermines the author's general credibility. Moreover, the author waited over two months before applying for asylum which indicates that he did not regard his situation in his home country as particularly serious. Nothing in this matter supports the author's claim that he would be at risk of being subjected to torture or other form of ill-treatment upon his return.

4.23 Finally, the information which the author has provided about what happened to him in the Islamic Republic of Iran and in other respects does not demonstrate that the risk of detention or torture is a foreseeable and necessary consequence of his return.

4.24 The State party thus maintains that in the present case substantial grounds do not exist for believing that the author would be in danger of being subjected to torture. An enforcement of the expulsion order would therefore, in the present circumstances, not constitute a violation of article 3 of the Convention.

Author's comments

5.1 In his comments on the State party's submission the author claims that he never said that he was a "retired National Pasdar Guard" and that the misunderstanding may be due to a poor translation. He insists that he is a Pasdar Guard, as the identity card he gave to the Swedish immigration authorities attests.

5.2 Before the tourist visa was granted his sponsor in Sweden had explained to the Swedish authorities that the author wanted to leave his country of origin because he was a member of the Pasdar Guard and wished to convert to Christianity. Therefore, the immigration authorities knew that the author was coming to Sweden for permanent residence. Moreover, the State party itself has acknowledged that the author had submitted an application for residence and a work permit to the Swedish Embassy in Tehran on 18 May 1995. The delay in applying for asylum, once he was in Sweden, was due to serious illness. The police officer in Boras who interviewed him noticed that he was seriously ill.

5.3 The author denies having said to the immigration authorities that he had whipped, inflicted other kinds of ill-treatment on or participated in extrajudicial executions of people and states that he left his country of origin precisely because he did not want to commit criminal acts. He claims that the misunderstanding on this issue was also due to a poor translation.

5.4 The State party states that the author submitted copies of two identity cards to the police in Boras. The author contends, however, that he submitted the originals, not copies, and that these cards were undeniable evidence that he was a member of the Sepah Pasdar Guard until he left the country. It is also undeniable that if a member of the Pasdar Guard flees the country he will be punished with death, even if he remains outside the country.

5.5 The author contests the State party's statement that persons converting from Islam to Christianity are not at risk in the Islamic Republic of Iran and states that some converts have even been executed recently. He also complains about the Swedish authorities having informed the Iranian authorities about his application for asylum, since that would expose him to further risk.

5.6 With respect to the observation by the State party that an Iranian citizen has to pass strict controls at Tehran airport, the author argues that this is true only if the person has been reported as suspicious. A Pasdar guard may, on the contrary, enjoy certain privileges at the airport.

5.7 With respect to the documents found to be forgeries, the author argues that he himself is not sure that these documents are authentic but that he cannot be held responsible for authenticity of documents he has received from Iran. He further complains about the Swedish authorities having informed the Iranian authorities that the documents were false and had been obtained through bribes.

5.8 In a further submission the author informed the Committee that on 16 December 1998 he filed another appeal with the immigration authorities that was also rejected.

Issues and proceedings before the Committee

6.1 Before considering any claims contained in a communication, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement. The Committee is further of the opinion that all domestic remedies have been exhausted and finds that no further obstacles to the admissibility of the communication exist. Since both the State party and the author's

counsel have provided observations on the merits of the communication, the Committee proceeds with the consideration of those merits.

6.2 The issue before the Committee is whether the forced return of the author would violate the obligation of Sweden under article 3 of the Convention not to expel or to return a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

6.3 The Committee must decide, pursuant to paragraph 1 of article 3, whether there are substantial grounds for believing that the author would be in danger of being subjected to torture upon return. In reaching this decision, the Committee must take into account all relevant considerations, pursuant to paragraph 2 of article 3, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. The aim of the determination, however, is to establish whether the individual concerned would be personally at risk of being subjected to torture in the country to which he or she would return. The existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute a sufficient ground for determining that a particular person would be in danger of being subjected to torture upon his return to that country; specific grounds must exist indicating that the individual concerned would be personally at risk. Similarly, the absence of a consistent pattern of gross violations of human rights does not mean that a person cannot be considered to be in danger of being subjected to torture in his or her specific circumstances.

6.4 In the case under consideration the Committee notes the statement of the National Immigration Board that the author was not entitled to asylum in accordance with the Convention relating to the Status of Refugees in view of the fact that he had admitted having committed the kind of crimes referred to in article 1 F of the said Convention. The Committee recalls, however, that unlike the provisions of the above Convention, article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment applies irrespective of whether the individual concerned has committed crimes and the seriousness of those crimes. On the other hand, the legal status of the individual concerned in the country where he/she is allowed to stay is not relevant for the Committee.

6.5 The Committee further notes the State party's argument that "substantial grounds" in article 3, paragraph 1, of the Convention means that the risk of the individual being tortured if returned is a "foreseeable and necessary consequence". In this respect the Committee recalls its previous jurisprudence[a] that the requirement of necessity and predictability should be interpreted in the light of its general comment on the implementation of article 3 which reads: "Bearing in mind that the State party and the Committee are obliged to assess whether there are substantial grounds for believing that the author would be in danger of being subjected to torture were he/she to be expelled, returned or extradited, the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. However, the risk does not have to meet the test of being highly probable" (A/53/44, annex IX, para. 6).

6.6 In the present case, the Committee notes that the author has provided it with an account of his activities which differs in many respects from the one he provided to the Swedish authorities. In the Committee's view, the important disparities cannot fully be explained by "poor translations", as suggested by the author, and raise doubts about his credibility. The author's credibility is further undermined by the fact that he provided the Swedish authorities with copies of an arrest warrant issued by a prosecutor and a judgement drawn up by the supreme military tribunal of the Islamic Republic of Iran, which turned out to be

[a] Communication No. 101/1997 (CAT/C/21/D/101/1997), Views adopted on 20 November 1998.

forgeries. In these circumstances the Committee finds that the author has not substantiated his claims that he is at risk of being tortured if he returns to his country of origin.

6.7 The Committee further notes that the author has also failed to substantiate his claim that deserters from the Pasdaran who leave the country, as well as converts to Christianity in general, face a real risk of being subjected to torture, especially if, in the case of the latter, they are not prominent members of the Christian community.

6.8 The Committee notes with concern the numerous reports of human rights violations, including the use of torture, in the Islamic Republic of Iran, but recalls that for the purposes of article 3 of the Convention, the individual concerned must face a foreseeable, real and personal risk of being tortured in the country to which he is returned. In the light of the foregoing, the Committee deems that such a risk has not been established.

6.9 On the basis of the above considerations the Committee considers that the information before it does not show substantial grounds for believing that the author runs a personal risk of being tortured if he is sent back to the Islamic Republic of Iran.

7. The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, concludes that the decision of the State party to return the author to Iran does not constitute a breach of article 3 of the Convention.

[Text adopted in English (original version) and translated into French, Russian and Spanish.]

8. Communication No. 106/1998

Submitted by: N. P. (Name withheld)

Alleged victim: The author

State party: Australia

Date of communication: 25 December 1997

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 6 May 1999,

Having concluded its consideration of communication No. 106/1998, submitted to the Committee against Torture under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the author of the communication and the State party,

Adopts its Views under article 22, paragraph 7, of the Convention.

1. The author of the communication is N. P., a Sri Lankan of Tamil ethnic origin, currently residing in Australia where he has applied for asylum and is at risk of expulsion. He alleges that his expulsion would constitute a violation of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. He is represented before the Committee by his cousin, Mahendra Nirajah.

Facts as submitted by the author

2.1 The author comes from Manipay, in the northern part of Sri Lanka. He claims that, even as a young boy, he was obliged to assist the Tamil separatists, the Liberation Tigers of Tamil Eelam (LTTE), in various ways, such as distributing their newspapers, selling publications and encouraging students to attend their meetings.

2.2 In the course of a military offensive conducted in the north of the country in 1987,[a] a landmine exploded near his family's house and some soldiers were killed. As a result, the author was detained for 20 days, tortured and deprived of family visits. In 1988, the anti-LTTE group EPRLF, operating in collusion with the Sri Lankan army, came to the author's school and warned the students against supporting the LTTE. The author was singled out, brought to a EPRLF camp and tortured before he was released. In 1989, clashes between Tamil militants and the Sri Lankan army resulted in frequent shelling and aerial bombings in the area of Manipay. The author's house was destroyed and the family became displaced, living in different refugee camps in the region.

2.3 Subsequently, the author started working in Colombo as a computer instructor. He was again forced to assist the LTTE and was detained several times and interrogated. In 1994 he was caught up in a cordon and search operation and held in detention for 17 days together with eight other Tamils. The author states that he was kept in a dark room except during interrogation, when strong lights were flashed upon his face. The author was allegedly beaten, not given proper food and subjected to sleep deprivation. He had to sleep on the floor, but as soon as he fell asleep buckets of water were thrown over him to keep him awake. The detainees were subsequently released with a severe warning.

2.4 The author states that after this incident, he tried to discontinue his association with the LTTE, but the organization's demands did not cease. He did not dare to report anything to the police for fear of reprisals against his family in Jaffna. He assisted in the purchase of computer equipment and other materials. In early 1997 he was contacted by an LTTE member who requested him to provide accommodation for the night. The man left early the next morning but was later arrested by the police, to whom he revealed the author's name. The author states that the police came to his workplace. Suspecting that they were searching for him, he managed to leave unseen. Fearing that his activities had become known to the authorities, the author contacted an agent who arranged for his travel to Australia via Singapore with a false passport.

2.5 The author arrived in Australia on 17 March 1997 and applied for a protection visa on 21 March 1997. The application was rejected by the Department of Immigration and Multicultural Affairs on 3 June 1997. The Refugee Review Tribunal (RRT) turned down his appeal on 28 July 1997. Subsequent appeals, including an application based on new information and a psychological assessment report, were considered inadmissible by the Department of Immigration and Multicultural Affairs, the Minister of Immigration and Multicultural Affairs and the Federal Court.

Complaint

3.1 The author fears that he will be arrested, tortured and killed by the army if he returns to his country. He argues that he has attracted the attention of the Sri Lankan police, military and pro-Government militant groups as a suspected supporter or member of the LTTE. In view of his past experiences, including torture, he cannot ask for the protection of the Sri Lankan authorities. He therefore submits that his forced return to Sri Lanka would constitute a violation by Australia of article 3 of the Convention.

3.2 The author further states that in view of the fact that he has previously been subjected to torture and is most probably suffering from a post-traumatic stress disorder,[b] even the possibility of detention and interrogation in the future would entail such emotional and physical pain that it would amount to persecution.

[a] In the author's communication the incident in question was said to have taken place in 1982.

[b] No medical evidence submitted.

State party's observations

4.1 On 20 February 1998 the Committee, acting through its Special Rapporteur for new communications, transmitted the communication to the State party for comments and requested the State party, under rule 108, paragraph 9, of the rules of procedure, not to expel the author while his communication is under consideration by the Committee.

4.2 By a submission of 1 September 1998, the State party informed the Committee that, following its request under rule 108, paragraph 9, the author would not be expelled from Australian territory until the case had been examined by the Committee. In view of the circumstances of the author's case, it was likely that he would remain in immigration detention until that time; the Committee was therefore requested to examine the communication as soon as possible. The State party challenged the admissibility of the communication, but also addressed the merits of the case.

A. Observations on admissibility

4.3 With respect to admissibility the State party submits that the communication is inadmissible because it lacks the minimum substantiation that would render it compatible with the Convention, in accordance with the jurisprudence of the Committee.[c] It notes the Committee's general comment on the implementation of article 3, according to which it is the responsibility of the author to establish a prima facie case for the purpose of admissibility of his or her communication.[d] In the State party's view, where there is question of possible refoulement there is a particular onus on the author to substantiate and convincingly plead a prima facie case. Unlike allegations relating solely to events on the territory of the responding State party, refoulement cases by their very nature are concerned with events outside the State party's immediate knowledge and control. The evidence of the author and alleged victim assumes greater importance.

4.4 The State party argues that the evidence supporting the allegation lacks credibility, since it is inconsistent, not detailed and not independently corroborated. Accordingly, the author has not established, prima facie, substantial grounds for his case.

4.5 On 9 February 1996, the author's father applied for a Sri Lanka (Special Assistance) Visa for entry to Australia. These visas were introduced in 1995 for the purpose of assisting Sri Lankans whose lives had been seriously disrupted by the fighting. At the time of the application, the grant of the visa was conditional on one of the members of the family unit — "the applicant" — satisfying criteria that included the following: the applicant must be a Sri Lankan citizen usually residing in Sri Lanka at the time of the application; the applicant's life had to have been seriously disrupted by the fighting in Sri Lanka in the 18 months preceding the date of application; the applicant had to be unable to resume normal life; the applicant had to have suffered substantial discrimination on the grounds of ethnicity or political belief; the applicant must have a parent, daughter, son, brother, sister, aunt, uncle, nephew or niece who was an Australian citizen or permanent resident on 1 January 1994, was usually resident in Australia and who would provide an undertaking to support the applicant.

4.6 The application was made in February 1996, i.e. less than 18 months after the alleged arrest and torture of the author by police in October 1994 and after the other alleged instances of ill-treatment of the author in 1994, 1993, 1989, 1988 and 1987. However, no

[c] Communication No. 18/1994, *X v. Switzerland*; Communication No. 17/1994, *X v. Switzerland*; Communication No. 31/1995, *X and Y v. the Netherlands*.

[d] General comment by the Committee against Torture on the implementation of article 3 in the context of article 22 of the Convention against Torture dated 23 November 1997 (A/53/44, annex IX).

mention was made in the application of any ill-treatment of the son, despite the fact that the application form stated that claims by any member of the close family which supported the application should be included. It is likely that the author's father would have known of any ill-treatment of his son since the latter had been a schoolboy of approximately 15 when the first instance of torture allegedly occurred. Moreover, the son appears to have kept in regular contact with his father after leaving for Colombo. In the State party's view, the omission by the author's father of any reference to the considerable ill-treatment that is later alleged by his son undermines the author's credibility.

4.7 The State party further submits that the author lacks credibility in view of inconsistent evidence and admissions he has made since his arrival in Australia. The State party underlines that it is not concerned with minor or irrelevant inconsistencies and that it recognizes the jurisprudence of the Committee that complete accuracy in the application for asylum is seldom to be expected of victims of torture.[e] In the category of minor or irrelevant inconsistencies Australia places the differing allegations regarding the year and extent of damage to the family home after shelling by the army in the 1980s; the perpetrators of the alleged arrest of the author in 1987; the means by which the author received confirmation that the police who visited his workplace in early 1997 were in fact looking for him. The evidence provided to Australia by the author and his advisers has, over time, included increasingly elaborate, and at times conflicting, statements of fact concerning his alleged treatment in Sri Lanka.

4.8 The variations between the author's original and later statements were noted by the RRT at its hearing. On arrival at Melbourne airport, the author was asked whether he had had any trouble with the police/army in his home country or whether his family had experienced any other disruption. His response was that he had been detained on one occasion, overnight. No reference was made to any ill-treatment. One month later, in the statement supporting his application for a protection visa, the author mentioned no fewer than seven instances of alleged mistreatment, detention and/or torture. Three months after arriving in Australia, in his reasons for review filed with the RRT, he mentioned an additional experience: the alleged interrogation for 20 days in December 1996. Responding to a request by the RRT for an explanation, the author stated that he had "misunderstood the question at the airport concerning difficulties with the authorities".[f] The State party is of the view that the author's explanation undermines his credibility with respect not only to the incident that he later said caused him to leave Sri Lanka, but to all later allegations of ill-treatment.

4.9 There were also contradictory statements regarding his movements in Sri Lanka. In his arrival interview he said that he had lived in Jaffna until going to Colombo in January 1997 to further his studies. Later, in his compliance interview with the Department of Immigration and Multicultural Affairs, the author stated that he had lived in Jaffna until March 1993, then lived in Colombo from March 1993 to February 1995, returning to Jaffna

[e] Communication No. 41/1996, *Kosoki v. Sweden*, 8 May 1996, para. 9.3; Communication No. 43/1996, *Tala v. Sweden*, 15 November 1996, para. 10.3.

[f] The State party notes that there was no interpreter present at the interview with the author on his arrival at Melbourne airport. However, in relation to the potential for misunderstanding, the State party also notes the following comment by the RRT: "[The author] appears to have been able to understand and respose (sic) to a range of other questions to which he supplied detailed factual answers. The Immigration inspector recorded that [the author] "appeared to be fluent in English and as such was interviewed without the need of an interpreter". (Another Sri Lankan detained at the same time was provided with an interpreter, it does not appear that [the author] at any stage requested an interpreter or expressed any difficulty). The author's own application form later described his ability to speak, read and write English as "reasonable".

in March 1995 because of the conditions in Colombo; he returned to Colombo about a month before his departure for Singapore and Australia. When questioned about the different stories by the RRT, the author stated that on arrival he had untruthfully concealed his employment in Colombo in 1993/94 because he had been told that this might lead to his immediate deportation. The State party, like the RRT, has formed the view that the author has diverged from the truth where it has suited his purposes.

4.10 The State party underlines the importance of the RRT findings. The tribunal has experience in reviewing applications concerning Sri Lankan nationals. In the 1996/97 programme year, 930 applications for review were received by the RRT from Sri Lankan nationals. Of the 678 applications processed, 236 were set aside and 408 were affirmed. Thirty-four applications were otherwise resolved. Thus, in relation to primary decisions, the set aside rate on review was 37 per cent.

4.11 Furthermore, the State party states that its view that the author's allegation lacks substantiation is supported by the lack of detail concerning, and independent corroboration of, the ill-treatment he allegedly experienced. During the asylum procedure the author has only described once the details of his ill-treatment. Even then, he described only one of the nine instances. There is no evidence to indicate that the author suffers from post-trauma stress which might affect his ability to provide detail of prior traumatic events.

4.12 The State party also points out that there are no documents to support the allegation that the author would face risk on return. Despite his claim to have some scars as the result of the torture he suffered at the hands of the EPRLF, the author has not provided any evidence of any permanent scarring that is consistent with the alleged mistreatment at the hands of the Sri Lankan authorities.

B. Observations on merits

4.13 The State party submits that should the Committee declare the communication admissible, it should be found to be without merit.

4.14 The State party recognizes that fighting between the LTTE and the Sri Lankan Government in recent years has taken a heavy toll on the civilian population and that despite an improvement in the human rights situation in recent years, mass movements of civilians and human rights infringements by both the security forces personnel and the LTTE continue to take place. However, in accordance with the Committee's jurisprudence, specific grounds must exist indicating that the individual concerned would be personally at risk of torture upon return.

4.15 Despite the level of ethnic conflict which exists in Sri Lanka at present, and on the basis of the State party's understanding of the author's background and the current situation in Sri Lanka, the State party has formed the view that, as a matter of fact and law, there are no circumstances particular to the author which constitute sufficient grounds for believing that he personally would be subjected to torture upon his return.

4.16 The author is a young Tamil man from Jaffna whose family has suffered as a result of the ethnic conflict, however, he has not suffered to any greater extent than any other young Tamil from the north. For the reasons presented in its admissibility submission, the State party cannot accept his allegations of ill-treatment, with the exception of the overnight detention in early 1996.

4.17 The State party has formulated its views on the likely treatment of a person in the author's situation based on the assessment of several expert groups in Sri Lanka, including the Australian High Commission in Colombo and independent organizations, and highlights, *inter alia*, the following. It is recognized that Tamil people in Sri Lanka are subjected to

a greater degree of surveillance, suspicion and arrest than non-Tamil people. One of the impacts of the LTTE attacks since October 1997 is a tightening of security in Colombo. More Tamil people are being caught up in the security measures, such as cordon and search operations (commonly called a "round-up") or checkpoints. Their purpose is to identify possible terrorists. People who do not have identity documents that readily establish their bona fides must find other means to do so. Those who do not have documentation and do not satisfy police that they have a legitimate reason for being in the city will be detained until their bona fides are established.

4.18 In Jaffna, security is less tense but security checks are nevertheless frequent. Checks take the form of channelling all people moving on a street into a single file for frisking. At these points, passengers in all passing vehicles are also searched. During cordon and search operations, everybody present, whether Tamil, Singhalese or Muslim, is checked. Non-Tamils are likely to be sent on their way and those detained will almost invariably be Tamil.

4.19 The State party submits that the profile of a person who might come under scrutiny in any such situations is the same: young Tamils from the north or east of Sri Lanka are most likely to be detained. However, the State party understands from consistent reports since February 1997 by the Australian High Commission in Sri Lanka and confirmed by independent sources that only a small percentage of people caught in a cordon and search operation or at a checkpoint are detained and, of those detained, the overwhelming majority are released once their identification and bona fides are established.

4.20 In addition, the State party notes that Tamil people, like anyone else, continue to have the protection of the law against unlawful activities by security services. Detained persons and their families have access to the assistance of the Human Rights Commission and international humanitarian organizations. There is evidence that intervention by these organizations in cases of individuals detained for lengthy periods has led to a speedy resolution of the case. The Sri Lankan Government has also demonstrated its willingness to avoid complicity in unlawful ill-treatment of Tamils. In December 1994, it enacted the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment Act (No. 22 of 1994) which makes it an offence for any person to torture, to aid or abet torture, or to conspire or attempt to torture any other person. It has also prosecuted members of the security services who have violated the law.

4.21 The State party notes the current practice of other States in relation to failed asylum-seekers from Sri Lanka. On 13 February 1998, the Australian High Commission in Colombo advised the Government that most Western missions in Colombo continue to be firmly of the view that Colombo and most urban centres in Sri Lanka are safe for the return of failed asylum-seekers. Countries which are actively repatriating Sri Lankans include Switzerland, Germany, Sweden, Norway, the United Kingdom, Italy and the Netherlands.

4.22 In view of the above, the State party does not consider that the author will be of interest to the security forces in a situation of active conflict, as he has denied active involvement in the activities of the LTTE. The State party has also confirmed that it is possible for a Sri Lankan national in the author's situation to obtain a full Sri Lankan passport and thereby re-enter Sri Lanka without drawing attention to himself.

4.23 On the other hand, the State party accepts that the author does come within the profile of individuals likely to come under scrutiny by the Sri Lankan authorities. It also recognizes that the author will have to apply for an identification document soon after his return which may take some days, during which time he may be particularly vulnerable to being questioned, and possibly detained, either in a cordon and search operation or at a checkpoint. However, such vulnerability itself does not provide substantial grounds for believing that

the author would be subjected to torture. On the basis that his bona fides will be able to be verified by the Sri Lankan authorities, the State party submits that the chances of the author being tortured, or indeed detained for a prolonged time, are very remote indeed.

4.24 Finally, the State party draws the Committee's attention to the requirement that the risk to the alleged victim be a risk of torture, rather than a less severe form of ill-treatment. The State party submits that neither the fact of detention itself, nor detention and questioning, has the necessary degree of deliberateness or intentionality nor the necessary severity of pain to fall within the definition of torture in the Convention. Even if the Committee were to accept that the only instance of alleged torture that is described by the author was substantiated, it cannot be assumed that treatment of this kind would fall within the scope of the definition of torture. The author has described an alleged experience of questioning combined with assault and deprivation of food, drink and sleep which, according to the jurisprudence of the European Court of Human Rights, does not necessarily constitute torture but rather inhuman and degrading treatment.

4.25 In conclusion, there is no evidence that the author has personal characteristics that make him more likely to come to the attention of the Sri Lankan authorities than any other young Tamil from the north. For these reasons, the State party submits that there are no substantial grounds to believe that the author would face torture on his removal to Sri Lanka. Moreover, any treatment the author is likely to receive at the hands of the Sri Lankan authorities would not have the necessary deliberateness or severity to constitute torture as defined in article 1, paragraph 1, of the Convention.

Author's comments

5.1 In accordance with rule 110, paragraph 4, of the rules of procedure of the Committee, the observations received from the State party were communicated to the author's representative, with the request that any comments he might wish to submit thereon should reach the Committee within six weeks of the date of the transmittal. No such comments were received despite a reminder sent several months after the given deadline.

Issues and proceedings before the Committee

6.1 Before considering any claims contained in a communication, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention. The Committee notes that the author has not provided comments to the State party's observations and considers that, in accordance with rule 108, paragraph 8, of its rules of procedure, non-receipt of such comments within the established time-limit should not delay the consideration of the admissibility of the communication. It therefore proceeds to the examination of the admissibility issue.

6.2 The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a) of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement and notes that the exhaustion of domestic remedies is not contested by the State party. It further notes the State party's view that the communication is inadmissible because it lacks the minimum substantiation that would render it compatible with the Convention and that there is a particular onus on the author to substantiate and convincingly plead a prima facie case in refoulement cases. The Committee nevertheless considers that the author has provided enough substantial elements prima facie and that his communication is compatible with the provisions of the Convention. It therefore considers that the communication is admissible.

6.3 Since the State party has also provided observations on the merits and the author, in accordance with rule 110, paragraph 4, of the rules of procedure, has been given the opportunity to make comments on such observations, the Committee will proceed to examine the communication on its merits.

6.4 The Committee must decide whether the forced return of the author to Sri Lanka would violate the State party's obligation under article 3, paragraph 1, of the Convention not to expel or return (refouler) an individual to another State where there are substantial grounds for believing that he/she would be in danger of being subjected to torture. In order to reach its conclusion the Committee must take into account all relevant considerations, including the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights. The aim, however, is to determine whether the individual concerned would personally risk torture in the country to which he or she would return. It follows that the existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute sufficient grounds for determining whether the particular person would be in danger of being subjected to torture upon his return to that country; additional grounds must be adduced to show that the individual concerned would be personally at risk. Similarly, the absence of a consistent pattern of gross violations of human rights does not mean that a person cannot be considered to be in danger of being subjected to torture in his or her specific circumstances.

6.5 The Committee is aware of the serious situation of human rights in Sri Lanka and notes with concern the reports of torture in the country, in particular during pre-trial detention. It is also aware of the fact that Tamils are at particular risk of being detained following controls at checkpoints or search operations.

6.6 Although the Committee considers that complete accuracy is seldom to be expected from victims of torture, it notes the important inconsistencies in the author's statements before the Australian authorities. It further notes that the author has not provided the Committee with any arguments, including medical evidence, which could have explained such inconsistencies. Accordingly, the Committee is not persuaded that the author faces a personal and substantial risk of being tortured upon his return to Sri Lanka.

7. In the circumstances the Committee, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, is of the view that the decision of the State party to return the author to Sri Lanka would not constitute a breach of article 3 of the Convention.

9. Communication No. 110/1998

Submitted by: Cecilia Rosana Núñez Chipana [represented by counsel]

Alleged victim: The author

State party: Venezuela

Date of communication: 30 April 1998

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 10 November 1998,

Having concluded its consideration of communication No. 110/1998, submitted to the Committee against Torture under article 22 of the Convention,

Having taken into account all information made available to it by the author of the communication and the State party,

Adopts its Views under article 22, paragraph 7, of the Convention.

1. The author of the communication is Cecilia Rosana Núñez Chipana, a Peruvian citizen detained in Venezuela and subjected to extradition proceedings at the request of the Government of Peru. She claims that her forced return to Peru would be a violation by Venezuela of article 3 of the Convention. She is represented by counsel.

Facts described by the author

2.1 The Committee received the first letter from the author on 30 April 1998. She stated that she was arrested in Caracas on 16 February 1998 by officials of the Intelligence and Prevention Services Department (DISIP). The Government of Peru requested her extradition on 26 February 1998, and extradition proceedings were instituted in the Criminal Chamber of the Supreme Court of Justice.

2.2 The author maintained that the nature of the accusations against her would place her in the group of persons liable to be subjected to torture. The Peruvian authorities accused her of the offence of disturbing public order (terrorism against the State) and being a member of the subversive movement Sendero Luminoso. The main evidence in support of these accusations was testimony by two persons under the repentance legislation (a legal device for the benefit of persons who are involved in acts of terrorism and who provide useful information to the authorities) in which they stated that they recognized the author in a photograph, as well as the police reports stating that subversive propaganda had been found in the place where the witnesses say the author carried out the acts of which she was accused. According to the author, the witnesses did not meet the requirements for being regarded as competent witnesses in accordance with the State party's procedural legislation because they were co-defendants in the proceedings against her. She also pointed out that her sister had been arrested in 1992, tried for her alleged involvement in subversive acts and kept in prison for four years until an appeal court declared her innocent.

2.3 The author denied the charges, although she admitted that she belonged to the lawful organization "United Left Movement" and to lawful community organizations such as the "Glass of Milk Committees" and the "Popular Libraries Committees". She said she had worked as an instructor in literacy campaigns for low-income groups in Peru. She also said she fled her country as a result of well-founded fears that her freedom and physical integrity were in danger, when she learned in the press that she was being accused of terrorism; she recognized that she used legal identity documents belonging to her sister to enter and stay in Venezuela. She also said she had not applied for political asylum in the State party, where she was working as a teacher, because she did not know the law and was afraid because she was undocumented.

2.4 If the Supreme Court of Justice authorized the extradition, it would take place within a few hours under an Executive order by which the Supreme Court would notify the Ministry of Justice, which would in turn notify the Ministry of Foreign Affairs, which would establish contact with the Government of Peru to make arrangements for the person's return to Peru.

2.5 In an earlier communication, the author informed the Committee that the Supreme Court had agreed to extradition in a decision published on 16 June 1998. It was subject to the following conditions: (a) that the author should not be liable to life imprisonment or the death penalty; (b) that she should not be liable to more than 30 years' imprisonment; and (c) that she should not be liable to detention incommunicado, isolation, torture or any other procedure that would cause physical or mental suffering while she was on trial or serving

her sentence. The author's counsel filed an application for constitutional *amparo* which was declared inadmissible by the Supreme Court. Extradition took place on 3 July 1998.

2.6 The author also informed the Committee that, on 24 March 1998, she formally submitted her application for asylum in writing and that, on 12 June 1998, her counsel formally requested that the Office of the United Nations High Commissioner for Refugees (UNHCR) should regard her as a candidate for refugee status.

Complaint

3.1 The author maintained that her forced return to Peru would place her in danger of being subjected to torture. Such a situation had to be borne in mind, particularly in the context of the existence in Peru of a consistent pattern of violations of human rights, an aspect of which was the frequent use of torture against persons accused of belonging to insurgent organizations, as noted by United Nations bodies, the Organization of American States and non-governmental organizations. The author therefore asked the Committee to request the State party to refrain from carrying out her forced return to Peru while her communication was being considered by the Committee.

3.2 She also maintained that, if she was extradited, proceedings would be brought against her that would not guarantee the fundamental principles of due process, since serious irregularities were committed every day in Peru during the trial of persons accused of belonging to an insurgent organization. Such irregularities were contrary to the provisions of the international human rights instruments ratified by Peru and by the State party.

Observations by the State party

4.1 Through its Special Rapporteur on New Communications, the Committee transmitted the communication to the State party on 11 May 1998, requesting it to submit its observations on the admissibility and, if it did not object thereto, on the merits of the communication. It also requested the State party to refrain from expelling or extraditing the author while her communication was being considered by the Committee.

4.2 On 2 July 1998, the State party informed the Committee that the Supreme Court's decision had been adopted in accordance with domestic legislation, particularly the Penal Code and the Code of Criminal Procedure, and the 1928 Convention on Private International Law, to which Peru and Venezuela were parties. The activities attributed to the author, namely, involvement in manufacturing and planting car bombs for later attacks which killed and wounded a large number of people, constituted a serious ordinary offence, not a political offence. The State party also indicated that the defence had not provided any factual evidence to indicate whether or not article 3, paragraph 1, of the Convention against Torture was applicable. The statements by witnesses who accused the author and whom the defence claimed had been subjected to torture had been made without any coercion, as shown by the fact that they had been given in the presence of representatives of the Public Prosecutor's Department and the defence lawyers.

Comments by the author

5.1 In her comments on the observations by the State party, the author maintained that the extradition took place even though legal remedies had not been exhausted, at the time when the Supreme Court was considering an application for *amparo* with a request for precautionary measures against the decision granting extradition. The extradition took place on 3 July and only on 7 July 1998 did the Court rule on the application for *amparo*, declaring it inadmissible, together with the precautionary measure requested. In addition, the transfer

to Peru took place by surprise, since the date was not communicated in advance either to the author or to her counsel.

5.2 The Supreme Court decision did not refer at all to the content of the reports submitted by the defence, but did refer at length to the opinion in favour of extradition issued by the Attorney-General of the Republic. The decision also did not refer to the provisional measures requested by the Committee, even though they were invoked by the defence. Only the dissenting judge referred to those measures, also noting that there were no grounds for convicting the author of the charges against her, that conditions in Peru did not guarantee due process and that international organizations had stated their views on flagrant human rights violations in Peru. As an argument against the opinion of the Supreme Court, the author also referred to the political nature of the offences with which she was charged in Peru.

5.3 The author said that neither she nor her counsel had received any reply in respect of the application for asylum, contrary to what the Minister for Foreign Affairs had stated when questioned by the Chamber of Deputies' Standing Committee on Domestic Policy. According to what he said, the Minister had informed the author, in a letter dated 27 March 1998, that the application for asylum did not contain evidence of political persecution and that the final decision lay with the Supreme Court.

5.4 He said that the State party had ratified the 1951 Convention relating to the Status of Refugees and the 1967 Protocol relating to the Status of Refugees, which provided that States had an obligation to set up the necessary machinery for their implementation. There were, however, no procedures or authorities in the State party to guarantee that asylum seekers would be guaranteed that right. Moreover, the Executive authorities of the State party had said that they could take a decision on asylum only after the Supreme Court had ruled on extradition. That argument was wrong, however, because asylum and extradition are two different and autonomous legal institutions.

5.5 The author reported to the Committee that, following her extradition, she was sentenced in Peru to 25 years' imprisonment on 10 August 1998, after a trial without proper guarantees. At present, she is being held in a maximum security prison, where, *inter alia*, she is confined to her cell for the first year (23 hours in her cell and 1 hour outside each day) and can receive family visits in a visiting room for only one hour a week.

5.6 The author recognizes that States and the international community are entitled to take action to combat terrorism. However, such action cannot be carried out in breach of the rule of law and international human rights standards. The right not to be returned to a country where a person's life, liberty and integrity are threatened would be seriously jeopardized if the requesting State had only to claim that there was a charge of terrorism against the person wanted for extradition. Such a situation is even worse if the accusation is made on the basis of national anti-terrorist legislation, with open-ended criminal penalties, broad definitions of "terrorist acts" and judicial systems of doubtful independence.

5.7 The author maintains that the State party has violated the obligation "to refrain" imposed on it by article 3 of the Convention. This makes it an obligation for the State party to take measures to prevent acts of torture from being committed against the author for the duration of the custodial penalty imposed by the Peruvian authorities or for as long as the Peruvian Government in any way prohibits her from leaving the country as a result of the charges which led to the proceedings against her. The State party therefore has to establish suitable machinery to follow up the conditions which it imposed and which were accepted by the Peruvian authorities.

Issues and proceedings before the Committee

6.1 Before examining any complaint contained in a communication, the Committee against Torture must determine whether it is admissible under article 22 of the Convention. The Committee has ascertained that, as required under article 22, paragraph 5 (a), the same matter has not been, and is not being, examined under another procedure of international investigation or settlement. The Committee notes that the State party has not submitted objections to the admissibility of the communication and is of the opinion that, in view of the Supreme Court's decision declaring inadmissible the application for *amparo* against the sentence of extradition, all available domestic remedies have been exhausted. The Committee therefore concludes that there are no reasons why the communication should not be declared admissible. Since both the State party and the author have submitted observations on the merits of the communication, the Committee will consider it as to the merits.

6.2 The question that must be elucidated by the Committee is whether the author's extradition to Peru would violate the obligation assumed by the State party under article 3 of the Convention not to extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

6.3 The Committee must then decide whether there are well-founded reasons for believing that the author would be in danger of being subjected to torture on her return to Peru. In accordance with article 3, paragraph 2, of the Convention, the Committee should take account, for the purpose of determining whether there are such grounds, of all relevant considerations, including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights. However, the existence of a pattern of this nature does not in itself constitute a sufficient reason for deciding whether the person in question is in danger of being subjected to torture on her return to this country; there must be specific reasons for believing that the person concerned is personally in danger. Similarly, the absence of this pattern does not mean that a person is not in danger of being subjected to torture in her specific case.

6.4 When considering the periodic reports of Peru,[a] the Committee received numerous allegations from reliable sources concerning the use of torture by law enforcement officials in connection with the investigation of the offences of terrorism and treason with a view to obtaining information or a confession. The Committee therefore considers that, in view of the nature of the accusations made by the Peruvian authorities in requesting the extradition and the type of evidence on which they based their request, as described by the parties, the author was in a situation where she was in danger of being placed in police custody and tortured on her return to Peru.

7. In the light of the above, the Committee, acting in accordance with article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, considers that the State party failed to fulfil its obligation not to extradite the author, which constitutes a violation of article 3 of the Convention.

8. Furthermore, the Committee is deeply concerned by the fact that the State party did not accede to the request made by the Committee under rule 108, paragraph 3, of its rules of procedure that it should refrain from expelling or extraditing the author while her communication was being considered by the Committee and thereby failed to comply with the spirit of the Convention. The Committee considers that the State party, in ratifying the Convention and voluntarily accepting the Committee's competence under article 22, undertook to cooperate with it in good faith in applying the procedure. Compliance with

[a] A/50/44, paras. 62-73, and A/53/44, paras. 197-205.

the provisional measures called for by the Committee in cases it considers reasonable is essential in order to protect the person in question from irreparable harm, which could, moreover, nullify the end result of the proceedings before the Committee.

[Done in English, French, Russian and Spanish, Spanish being the original.]

10. Communication No. 112/1998

Submitted by: H.D. (name withheld)
[represented by counsel]

Alleged victim: The author

State party: Switzerland

Date of communication: 4 June 1998

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 30 April 1999,

Having concluded its consideration of communication No. 112/1998, submitted to the Committee against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the authors of the communication, their counsel and the State party,

Adopts its Views under article 22, paragraph 7, of the Convention.

1. The author of the communication is H.D., a Turkish citizen of Kurdish origin, who was born in 1960. He has been refused refugee status in Switzerland and is threatened with being returned to Turkey with his wife and two children. He states that his return to Turkey would be in contradiction with Switzerland's obligations under article 3 of the Convention. He is represented by counsel.

Facts as presented by the author

2.1 The author is from the Pazarcik region of Turkey. He states that he was a supporter of the illegal PKK (Partya Karkener Kurdistan, Kurdistan Worker's Party) party as a student, but did not participate in specific activities apart from providing food and clothing to friends who were involved with the PKK. He says that one of his cousins, an active PKK member who had been imprisoned from September 1990 to April 1991, came to stay with him and his family after his release. On 14 and 15 May 1991, members of the security forces came to search for his cousin in his home. Not finding him, they arrested the author on 15 May and took him first to Pazarcik police station, where he was beaten, and later to Maras, where he was questioned about his cousin's whereabouts and activities. He states that he was detained until 28 May 1991 and that he was tortured, in particular with electric shocks. He was released with the explanation that his cousin had been found.

2.2 On returning to Pazarcik, he learned that his cousin had been killed by the security forces. In the hospital he saw the body, which had been disfigured and mutilated. In the cemetery he tried to take a photo of the body, but an unknown person who, he believes, was connected with the security forces prevented him from doing so by throwing his camera on to the ground. On 5 June 1991, he was again arrested for a day. He was told that the security forces were aware of his support for the PKK, and was threatened with death if he refused to cooperate with the information service and denounce members of the PKK.

Feeling that his life was in danger, he decided to leave the country and travelled to Istanbul on 14 July 1991.

2.3 On the day of his departure for Istanbul, persons in civilian clothes came to his home and asked his wife where he was. She told them that he was at work and was thereupon insulted and accused of supporting terrorists. She was then taken to the police station, where she was held for several hours and slapped. On 13 August 1991 she joined her husband in Istanbul.

2.4 The author arrived in Switzerland with his family on 20 August 1991 and immediately applied for asylum. The Federal Office for Refugees rejected his application on 21 April 1992. On 17 January 1996, the Appeal Commission on Asylum Matters rejected the appeal. The author submitted a request for review of the decision by the Commission, which was also rejected on 12 August 1996. Two requests for reconsideration were submitted to the Federal Office for Refugees, which rejected them on 5 September 1996 and 1 May 1998. Finally, on 19 May 1998, the Commission on Asylum Matters rejected the appeal against those decisions.

2.5 Counsel states that the author's flight would be largely inexplicable had it not been for the torture he had suffered and the pressure brought to bear on him to collaborate with the secret services. It should be borne in mind that his wife had been seven months pregnant when she left and the author had been financially well off in Turkey. A psychiatrist had found that the author was suffering from post-traumatic stress disorder caused mainly by his experiences prior to his arrival in Switzerland. Furthermore, the author and his family had lived illegally in Switzerland for more than two years, which had seriously undermined his psychological health. Had it not been for the certainty of being tortured in Turkey if he went back, his illegal stay in Switzerland remained unaccountable.

Merits of the complaint

3. In view of the reasons which prompted his departure from Turkey and the existence of a consistent pattern of flagrant persecution of Kurdish separatists by the Turkish authorities, the author states that his return to Turkey would constitute a violation of article 3 of the Convention, since there are substantial grounds for believing that he would be at risk of being subjected to torture upon his return.

State party's observations on the admissibility and merits of the communication

4.1 In a letter of 19 August 1998, the State party informed the Committee that it had been unable to accede to the Committee's invitation of 23 June 1998, pursuant to article 108, paragraph 9, of its rules of procedure, not to expel or return the author to Turkey since he and his family had been missing since 15 September 1996. On 27 November 1998, the State party informed the Committee that the author and his family had reappeared and that the Federal Office for Refugees had requested the immigration authorities of the Canton of Berne not to enforce the return while the present communication was pending before the Committee. The State party also indicated that it did not contest the admissibility of the communication.

4.2 As to substance, the State party notes that the author has, in his communication to the Committee, recapitulated the arguments he adduced in support of his application for asylum. In the latter he had stated that he had given financial support to active members of the PKK. In addition, he had provided them with food and clothing. He stated that he had been arrested for the first time in 1977 and that, in 1982, he had been put under pressure to cooperate with the Turkish information service. He claims that his return to Turkey would expose him to the risk of rearrest and torture (known as "deliberate persecution").

4.3 According to the State party, the statements made by the author at his hearings before the Federal Office for Refugees on 30 August and 2 December 1991 contained factual inconsistencies and contradictions. The private medical examination of 31 January 1998, six and a half years after the deposit of his application for asylum, did not prove that the post-traumatic disorders had originated at a time prior to his departure from his country. Even if the author had been subjected to torture, the Swiss authorities considered that he would not be in danger of being subjected to "deliberate persecution" on his return to Turkey in view of, *inter alia*, the information obtained by the Swiss embassy in Ankara that the author was not wanted by the police and was not forbidden to hold a passport.

4.4 The competent Swiss authorities mentioned the lack of credibility of the author's statement that he had been tortured during his detention from 15 to 28 May 1991. In support of his communication, the author states, as he had previously done before the Swiss authorities, that on 15 May 1991 the security forces had come to his home looking for his cousin N.D. When they did not find his cousin, they allegedly took him to Pazarcik police station and then to Kahramanmaras, where they tortured him. During his hearing before the immigration authorities on 2 December 1991, the author stated that he had been beaten with rubber truncheons while blindfolded and with his hands bound. He had also allegedly been subjected to electric shocks. When questioned on this point, he had claimed that the electric wire had been attached to his toes and that his whole body had shaken. He had been able to describe in detail the appliance from which the electric shocks originated: "There was a sort of grip which they attached to my toes. There was also an appliance like a battery which they plugged in". The Federal Office and Commission had noted certain inconsistencies in the author's account. He had allegedly been blindfolded while being taken to the place where he had been tortured, but he had nevertheless been able to describe in detail the appliance which produced the electric shocks and the way in which it had been used, even though, in his own words, he had been blindfolded during the torture. In his communication, being aware of this contradiction, he claims that he had imagined the physical causes of the pain and had given a very general description of them. In that connection, he maintains that the Swiss authorities have completely ignored the normal functioning of memory. Irrespective of the validity of that objection, it should be recalled that the Swiss authorities had taken account of a large number of other inconsistencies in casting doubt on the author's credibility.

4.5 On 28 May 1991, after the security forces had found his cousin, the author had allegedly been released right away. The Commission on Refugee Matters had concluded therefrom, in its decision of 17 January 1996, that the Turkish authorities had not been interested in pursuing the author since only N.D. had been of interest to them. In its decision of 21 April 1992, the Federal Office had considered that the author would not have been released if the Turkish security forces had really suspected him of having supported the PKK. In any event, judicial proceedings would have been initiated against him and he would have been detained for longer than 14 days. In no circumstances would he have been released on the very day when N.D. was found.

4.6 Another point was that the author and his wife had, according to their statements, legally obtained identity cards on 9 July 1991, that is, after the arrest. That would have been unlikely in the case of a person who was genuinely sought by the Turkish information service since he would have been in danger of again being arrested at that time. In reply to that argument by the Federal Office, the author had stated in his appeal to the Commission of 10 September 1993 that he had not obtained the identity cards himself, but had obtained them through a certain Mehmet Jeniay, who was allegedly on good terms with the Pazarcik authorities. The Commission considered that that new explanation was irrelevant in view of the author's statements at his previous hearings.

4.7 In his application for review of 25 April 1996, the author had transmitted documents (an indictment for accepting or soliciting bribes and forgery, a judgement concerning Mahmut Yeniay) intended to demonstrate that Mahmut Yeniay (or Mehmet Jeniay), an official in the identity card office in Pazarcik and known for his corruptibility and irregularities when issuing such cards, had indeed issued the identity card in question. In its decision of 12 August 1996, the Commission had noted the following inconsistencies in that connection:

(a) The criminal proceedings against Mahmut Yeniay had been still pending at the time when the identity cards were issued. It is difficult to imagine that he might still have been able to issue such documents in complete freedom, especially since he had been imprisoned for one month shortly before;

(b) On the identity card submitted to the Federal Office, the name of the issuing official is not that of Mahmut Yeniay;

(c) In the present communication the author reaffirms what he stated at his first hearing, namely that he had obtained his identity card legally, whereas in his appeals within Switzerland he has endeavoured to demonstrate the opposite.

4.8 Other contradictions by the applicant are also apparent:

(a) The author stated in his communication, as he had done to the Swiss authorities, that his cousin had stayed with him after having been released and that he had given food and clothing to PKK members. His wife, on the other hand, stated that, during that same period, her husband had been building a school in a village near Cerit and that often he would not come home for three or four days, or even a week. She stated that she had prepared meals for N.D. and one of her cousins, who was also a member of the PKK. On the basis of those statements, it was probable that N.D. had not stayed in the author's home. There might, however, have been occasional meetings between them;

(b) Reference should also be made to certain contradictions in the author's statements concerning the duration of his detention in Pazarcik following his arrest on 15 May 1991. He had mentioned two days in his statements to the registration centre and four days to the immigration authorities;

(c) The author also contradicted himself in his statements concerning the date of the last arrest, giving 5 June 1991 to the registration centre and in the communication and 6 June 1991 to the immigration authorities. Furthermore, his wife has never spoken of that arrest;

(d) The author's statements are unconvincing and inconsistent concerning the circumstances of the burial of N.D. In particular, he stated at his first hearing that he had been prevented by an unknown person from photographing the body of N.D., whereas at the second hearing the person preventing him had been a member of the special unit or the information service;

(e) It is unlikely that the author, who had allegedly been threatened with death if he did not cooperate with the information service at the time of his last arrest on 6 June 1991, would have been released after only one day;

(f) It is also unlikely that the author would have waited a further two months before fleeing his country or that he could have been issued, in complete legality, with an identity card before his departure;

(g) In his communication the author maintains that, if he had not really been tortured, he would not have run away with his wife because she had been seven months pregnant at the time of departure. In that connection, the question arises why the author had waited a

further two months after his last arrest before fleeing. As time passed, it was becoming more and more difficult to leave the country.

4.9 In the light of the foregoing considerations, the allegations of arrests and persecution suffered by the author appear very doubtful and are not based on any substantial indication worthy of consideration under article 3 of the Convention.

4.10 In his communication the author claims that the post-traumatic disorders from which he is suffering are primarily the result of what he suffered in Turkey. The doctor who examined the author on two occasions, on 16 and 29 January 1998, in the presence of an interpreter, arrived at the following diagnosis: the author is suffering from a post-traumatic disorder; he has other typical symptoms: traumatizing memories, sleep disturbance, fear and panic; he is in need of treatment. The possible causes of his psychological state are described by the expert as follows: "It should be further mentioned that the long period during which the author has hidden in Switzerland has also had a great effect on his condition and has left marks. His reactions during my examination of him demonstrate that the most significant elements derive from the preceding period."

4.11 The Federal Office and the Commission considered that there was nothing to show that the author's disorders resulted from the torture he had allegedly suffered in Turkey in 1991. The Commission noted that the doctor's statement that the causes of the disorders had existed mainly prior to the author's disappearance did not mean that the causes did not date back to a period following the author's departure from his country. As the doctor had noted, living illegally for two years was undoubtedly very stressful for the father of a family and could be a plausible cause for his poor psychological condition. In any event, it is undoubtedly surprising that the author did not report his post-traumatic disorders until 1998, that is, six and a half years after his arrival in Switzerland, precisely at the time when he was due to be sent back. The State party believes it has thus demonstrated that the medical test should not be regarded as evidence within the meaning of paragraph 8 (c) of the Committee's general comment on the implementation of article 3 of the Convention.

4.12 The author maintains that on his return he would be liable to rearrest and torture since he has allegedly supported relatives sought by the security forces. However, the relatives active within the PKK whom he claims to have supported, namely his cousin N.D. and his wife's cousin, were killed in 1991 and 1992 respectively. It is therefore not clear why the Turkish authorities should still today be interested in persecuting the author. In that connection, it should be recalled that, at the time of his arrest in May 1991, the author was immediately released after the special unit found the body of N.D. On the occasion of his last arrest in June 1991, he was not tortured and was released the same day. From this it may be concluded that the information service, already at that time, no longer had any special interest in pursuing the author. Lastly, it cannot be claimed that the Turkish authorities consider that, after living abroad for more than seven years, the author is still in close contact with relatives active in the PKK in Turkey.

4.13 In its decision of 12 August 1996, the Commission, in accordance with its previous decisions in cases of deliberate persecution, found that threat of persecution was generally limited to a small geographical area and that the individual concerned could avoid the threat of persecution by settling in another region of the country. In addition, the Swiss mission in Ankara had made inquiries about the author's situation in Turkey and, in November 1992, confirmed that the police had no political file on the author and that he had no criminal record. Nor had his right to hold a passport been revoked. On the contrary he and his wife had obtained passports in 1991 at Kahramanmaras, contrary to what he had said. All these considerations make "deliberate persecution" very implausible.

4.14 Admittedly, to determine whether there are substantial grounds for believing that a person would be in danger of being subjected to torture, the competent authorities must take into account "all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights" (Convention, art. 3 (2)). The Swiss Government does not dispute the fact that the situation in certain regions of south-eastern Turkey is difficult owing to fighting between Turkish security forces and PKK movements. Violent conflicts, however, are concentrated in clearly defined regions. In previous decisions the Commission on Asylum Matters has consistently found that deliberate persecution is generally limited to a small geographical area, basically a village or region where the local police act on their own authority. Thus there is generally the possibility of fleeing, in this case to towns or cities in western Turkey, especially as freedom of establishment is guaranteed in Turkey and there are social networks in western Turkey for receiving large numbers of Kurds.

4.15 Thus Kurds do not appear to be at risk in all regions of Turkey today. In the case at hand, therefore, the inquiry should focus on whether the author would be personally at risk if he were to return to Turkey and whether he has a fair and reasonable possibility of settling in certain regions of Turkey. In its decision of 17 January 1996, the Commission found that returning the author to Kahramanmaras, his province of origin, would not be admissible, but that the author, who speaks Turkish well and has a good education, his wife and two children could, on the other hand, be perfectly well expected to begin to lead a decent and worthy life in a region of the country where they would not be at risk. Considering the author's professional experience in different fields and his educational background, it may be assumed that he will have comparatively fewer problems in finding the means to support himself and his family than many other members of the Kurdish people.

4.16 In view of the foregoing, the Swiss Government invites the Committee against Torture to find that the return to Turkey of the author of this communication would not constitute a violation of Switzerland's international commitments under the Convention.

Counsel's comments

5.1 In his comments on the State party's observations, counsel says the fact that the competent authorities have handed down six decisions is no indication that they have delved very deeply into the case. The authorities have at no time noted that the author was suffering from post-traumatic stress disorders resulting from the events he had experienced in Turkey, nor have they ever thought of consulting a psychiatrist to compensate for their own lack of knowledge in this area.

5.2 The State party denies the conclusions of the medical report, without giving any reasons. The report, however, clearly notes that most of the author's post-traumatic problems stem from a time before he left his country.

5.3 No conclusions concerning torture or political persecution can be drawn from the fact that the Government of Turkey has not confirmed the existence of a political file on the author or that he has a criminal record.

5.4 From 15 to 28 May 1991, the author was in a situation where he was the victim of deliberate persecution, according to the principles established by the Swiss asylum authorities. It is completely contradictory for the Swiss authorities to cast doubt on the author's credibility when he claims to have been arrested and tortured because the Turkish authorities were looking for N.D.

5.5 Counsel holds that it was perfectly reasonable for Mahmut Yeniay to forge a name and issue an identity card for which he had received a bribe. As Yeniay had been released

and might even have anticipated the acquittal of 16 July 1991, it was not too dangerous for him to continue to take bribes.

5.6 The author's so-called contradictions are far from sufficient to cast doubt on his credibility. Firstly, they relate not to the torture suffered but to unimportant details. Secondly, the State party gives no consideration to aspects of psychological theory generally used to judge a person's credibility.

5.7 The so-called contradiction mentioned in paragraph 4.8 (c) above concerns not the author but his wife, and the State party's argument is mere speculation. There is nothing to indicate that the State party is correct in assuming that N.D. had probably not stayed in the author's home.

5.8 The so-called contradictions concerning the length of the author's detention in May 1991 and the date of his last detention (paras. 4.8 (b) and (c)) in fact confirm the author's credibility since a person with the author's education would be capable of devising a consistent story even if he had not been arrested.

5.9 The fourth so-called contradiction (para. 4.8 (d)) is not a contradiction at all, as the author did not know the identity of the person he suspected of being a member of the information services. Even the Federal Office concluded that the author's statements on this point were credible (Commission on Asylum Affairs decision of 17 January 1996).

5.10 The fifth so-called contradiction, concerning the death threats (para. 4.8 (e)), is also not a contradiction. Death threats are used to intimidate people and as a measure of political persecution. They must be taken seriously in a country where the security services cause dozens of persons to disappear every year, primarily in connection with Kurdish separatism.

5.11 Finally, with regard to the sixth and seventh so-called contradictions (paras. 4.8 (f) and (g)), counsel points out that the author did not wait two months before leaving his country, but in fact used that time to prepare for h[illegible]eparture. A decision to leave one's country is not one to be taken lightly, quite the contr[illegible]y.

5.12 Counsel submits that the Swiss authorities have not at any time examined the author's statements in the light of psychological criteria, in particular regarding the effects of torture on the author. The author informed the Federal Office on 30 August 1991 that he had been tortured. At no point since then have the Swiss authorities attempted to verify that information by consulting a psychiatrist. They alone are responsible for this omission. The fact that the author preferred to live illegally for two years rather than return to Turkey is proof of his fear of being persecuted and tortured again. His fear is based on the following: (a) the existence of a pattern of gross, flagrant and mass violations of human rights in Turkey today; (b) his credible statements, corroborated by a medical test, that he has been tortured and that the effects of the torture still exist; (c) there are no obvious violations pursuant to paragraph 2 of article 3, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. The aim of the determination, however, is to establish whether the individual concerned would be personally at risk of being subjected to torture in the country to which he or she would return. It follows that the existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute a sufficient ground for determining that a particular person would be in danger of being subjected to torture upon his return to that country. Other grounds must exist that indicate that the individual concerned would be personally at risk. Similarly, the absence of a consistent pattern of gross violations of human rights does not mean that a person cannot be considered to be in danger of being subjected to torture in his or her specific circumstances.

Issues and proceedings before the Committee

6.1 Before considering any claims contained in a communication, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement. The Committee also notes that all domestic remedies have been exhausted and that the State party has not contested the admissibility of the communication. It therefore considers that there is no reason why the communication should not be declared admissible. Since both the State party and the author have provided observations on the merits of the communication, the Committee proceeds immediately with the consideration of those merits.

6.2 The issue before the Committee is whether the forced return of the author to Turkey would violate the obligation of the State party under article 3 of the Convention not to expel or to return a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

6.3 The Committee must decide, pursuant to paragraph 1 of article 3, whether there are substantial grounds for believing that the author would be in danger of being subjected to torture upon return to Turkey. In reaching this decision, the Committee must take into account all relevant considerations, pursuant to paragraph 2 of article 3, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. The aim of the determination, however, is to establish whether the individual concerned would be personally at risk of being subjected to torture in the country to which he or she would return. It follows that the existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute a sufficient ground for determining that a particular person would be in danger of being subjected to torture upon his return to that country. Other grounds must exist that indicate that the individual concerned would be personally at risk. Similarly, the absence of a consistent pattern of gross violations of human rights does not mean that a person might not be subjected to torture in his or her specific circumstances.

6.4 In the present instance, the Committee notes that the State party draws attention to inconsistencies and contradictions in the author's account, casting doubt on the truthfulness of his allegations. The Committee considers, however, that even in the presence of lingering doubts as to the truthfulness of the facts presented by the author of a communication, it must satisfy itself that the applicant's security will not be jeopardized. It is not necessary, for the Committee to be so satisfied, that all the facts related by the author should be proved: it is enough if the Committee considers them sufficiently well attested and credible.

6.5 From the information submitted by the author, the Committee observes that the events that prompted his departure from Turkey date back to 1991, and seem to be particularly linked to his relations with members of his family who belong to the PKK. The apparent object of arresting the author in 1991 was, on the first occasion, to force him to disclose his cousin's whereabouts, and on the second occasion, to force him to collaborate with the security forces. On the other hand, the question of a prosecution against him on specific charges has never arisen. Furthermore, there is nothing to suggest that he has collaborated with PKK members in any way since leaving Turkey in 1991, or that he or members of his family have been sought or intimidated by the Turkish authorities. In the circumstances, the Committee considers that the author has not furnished sufficient evidence to support his fears of being arrested and tortured upon his return.

6.6 The Committee notes with concern the numerous reports of human rights violations, including the use of torture, in Turkey, but recalls that, for the purposes of article 3 of the

Convention, the individual concerned must face a foreseeable, real and personal risk of being tortured in the country to which he is returned. In the light of the foregoing, the Committee deems that such a risk has not been established.

6.7 The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, concludes that the State party's decision to return the author to Turkey does not constitute a breach of article 3 of the Convention.

[Done in English, French, Russian and Spanish, the French text being the original version.]

11. Communication No. 120/1998

Submitted by: Sadiq Shek Elmi
[represented by counsel]

Alleged victim: The author

State party: Australia

Date of communication: 17 November 1998

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 14 May 1999,

Having concluded its consideration of communication No. 120/1998, submitted to the Committee against Torture under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the author of the communication, his counsel and the State party,

Adopts its Views under article 22, paragraph 7, of the Convention.

1. The author of the communication is Mr. Sadiq Shek Elmi, a Somali national from the Shikal clan, currently residing in Australia, where he has applied for asylum and is at risk of expulsion. He alleges that his expulsion would constitute a violation by Australia of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Facts as submitted by the author

2.1 The author was born on 10 July 1960 in Mogadishu. Before the war he worked as a goldsmith in Mogadishu, where his father was an elder of the Shikal clan. The author states that members of the Shikal are of Arabic descent, identifiable by their lighter coloured skin and discernable accent. The clan is known for having brought Islam to Somalia, for its religious leadership and relative wealth. The author claims that the clan has not been directly involved in the fighting, however it has been targeted by other clans owing to its wealth and its refusal to join or support economically the Hawiye militia. In the lead up to the ousting of President Barre in late 1990, the author's father, as one of the elders of his clan, was approached by leaders of the Hawiye clan seeking Shikal financial support and fighters for the Hawiye militia.

2.2 The author further states that upon refusal to provide support to the Hawiye militia in general, and in particular to provide one of his sons to fight for the militia, his father was shot and killed in front of his shop. The author's brother was also killed by the militia, when

a bomb detonated inside his home, and his sister was raped three times by members of the Hawiye militia, precipitating her suicide in 1994.

2.3 The author claims that on a number of occasions he barely escaped the same fate as his family members and that his life continues to be threatened, particularly by members of the Hawiye clan who, at present, control most of Mogadishu. From 1991 until he left Somalia in 1997, he continuously moved around the country for reasons of security, travelling to places that he thought would be safer. He avoided checkpoints and main roads and travelled through small streams and the bush on foot.

2.4 The author arrived in Australia on 2 October 1997 without valid travel documents and has been held in detention since his arrival. On 8 October 1997, he made an application for a protection visa to the Department of Immigration and Multicultural Affairs. Following an interview with the author held on 12 November 1997, the application was rejected on 25 March 1998. On 30 March 1998, he sought review of the negative decision before the Refugee Review Tribunal, which turned down his request on 21 May 1998. The author subsequently appealed to the Minister for Immigration and Multicultural Affairs, who, under the Migration Act, has the personal, non-compellable and non-reviewable power to intervene and set aside decisions of the Refugee Review Tribunal where it is in the "public interest" to do so. This request was denied on 22 July 1998.

2.5 On 22 October 1998, the author was informed that he was to be returned to Mogadishu, via Johannesburg. Amnesty International intervened in the case and, in a letter dated 28 October 1998, urged the Minister for Immigration and Multicultural Affairs to use his powers not to remove the author as planned. In addition, the same day the author submitted a request to the Minister to lodge a second application for a protection visa. In the absence of the exercise of the Minister's discretion, the lodging of a new application for refugee status is prohibited.

2.6 On 29 October 1998, the author was taken to Melbourne Airport to be deported, escorted by guards from the Immigration Detention Centre. However, the author refused to board the plane. As a result, the captain of the aircraft refused to take him on board. The author was then taken back to the detention centre. On the same day he addressed an additional plea to the Minister in support of his previous requests not to be removed from Australia; it was rejected. On 30 October 1998, the author was informed that his removal would be carried out the following day. On the same date he sought an interim injunction from Justice Haynes at the High Court of Australia to restrain the Minister from continuing the removal procedure. Justice Haynes dismissed the author's application on 16 November 1998, in view of the fact that the circumstances did not raise a "serious question to be tried". Special leave was sought to appeal to the full bench of the High Court, but that request was also dismissed.

2.7 The author states that he has exhausted all available domestic remedies and underlines that, while he could still technically seek special leave from the High Court, his imminent removal would stymie any such application. He further indicates that the legal representatives initially provided to him by the authorities clearly failed to act in their client's best interest. As the submitted documents reveal, the initial statement and the subsequent legal submissions to the Review Tribunal were undoubtedly inadequate and the representatives failed to be present during the author's hearing with the Tribunal in order to ensure a thorough investigation into his history and the consequences of his membership of the Shikal clan.

Complaint

3.1 The author claims that his forced return to Somalia would constitute a violation of article 3 of the Convention by the State party and that his background and clan membership would render him personally at risk of being subjected to torture. He fears that the Hawiye clan will be controlling the airport on his arrival in Mogadishu and that they will immediately ascertain his clan membership and the fact that he is the son of a former Shikal elder. They will then detain, torture and possibly execute him. He is also fearful that the Hawiye clan will assume that the author, being a Shikal and having been abroad, will have money, which they will attempt to extort by torture and other means.

3.2 It is emphasized that in addition to the particular circumstances pertaining to the author's individual case, Somalia is a country where there exists a pattern of gross, flagrant or mass violations of human rights. In expressing its opinion in the author's case, the Regional Office of the United Nations High Commissioner for Refugees (UNHCR) for Australia, New Zealand, Papua New Guinea and the South Pacific stated that "(w)hile it is true that UNHCR facilitates voluntary repatriation to so-called Somaliland, we neither promote nor encourage repatriation to any part of Somalia. In respect of rejected asylum-seekers from Somalia, this office does urge States to exercise the utmost caution in effecting return to Somalia."[a] Reference is also made to the large number of sources indicating the persisting existence of torture in Somalia, which would support the author's position that his forced return would constitute a violation of article 3 of the Convention.

State party's observations

4.1 On 18 November 1998, the Committee, acting through its Special Rapporteur on new communications, transmitted the communication to the State party for comments and requested the State party not to expel the author while his communication was under consideration by the Committee.

4.2 By submission of 16 March 1999, the State party challenged the admissibility of the communication, but also addressed the merits of the case. It informed the Committee that, following its request under rule 108, paragraph 9, the expulsion order against the author has been stayed while his communication is pending consideration by the Committee.

Observations on admissibility

4.3 As regards the domestic procedures, the State party submits that although it considers that domestic remedies are still available to the author it does not wish to contest the admissibility of the communication on the ground of non-exhaustion of domestic remedies.

4.4 The State party contends that this communication is inadmissible *ratione materiae* on the basis that the Convention is not applicable to the facts alleged. In particular, the kind of acts the author fears that he will be subjected to if he is returned to Somalia do not fall within the definition of "torture" set out in article 1 of the Convention. Article 1 requires that the act of torture be "committed by, or at the instigation of, or with the consent or acquiescence of a public official or any other person acting in an official capacity". The author alleges that he will be subjected to torture by members of armed Somali clans. These members, however, are not "public officials" and do not act in an "official capacity".

4.5 The Australian Government refers to the Committee's decision in *G.R.B. v. Sweden*, in which the Committee stated that "a State party's obligation under article 3 to refrain from forcibly returning a person to another State where there were substantial grounds to believe

[a] Letter dated 7 September 1998 addressed to the author's counsel.

that he or she would be in danger of being subjected to torture was directly linked to the definition of torture as found in article 1 of the Convention."[b]

4.6 The State party further submits that the definition of torture in article 1 was the subject of lengthy debates during the negotiations for the Convention. On the issue of which perpetrators the Convention should cover, a number of views were expressed. For example, the delegation of France argued that "the definition of the act of torture should be a definition of the intrinsic nature of the act of torture itself, irrespective of the status of the perpetrator".[c] There was little support for the French view although most States did agree that "the Convention should not only be applicable to acts committed by public officials, but also to acts for which the public authorities could otherwise be considered to have some responsibility."[d]

4.7 The delegation of the United Kingdom of Great Britain and Northern Ireland made an alternative suggestion that the Convention refer to a "public official or any other agent of the State".[e] By contrast, the delegation of the Federal Republic of Germany felt that "it should be made clear that the term 'public official' referred not only to persons who, regardless of their legal status, have been assigned public authority by State organs on a permanent basis or in an individual case, but also to persons who, in certain regions or under particular conditions actually hold and exercise authority over others and whose authority is comparable to government authority or — be it only temporarily — has replaced government authority or whose authority has been derived from such persons."[f]

4.8 According to the State party it was ultimately "generally agreed that the definition should be extended to cover acts committed by, or at the instigation of, or with the consent or acquiescence of a public official or any other person acting in an official capacity".[g] It was not agreed that the definition should extend to private individuals acting in a non-official capacity, such as members of Somali armed bands.

Observations on merits

4.9 In addition to contesting the admissibility the State party argues, in relation to the merits, that there are no substantial grounds to believe that the author would be subjected to torture if returned to Somalia. The author has failed to substantiate his claim that he would be subjected to torture by members of the Hawiye and other armed clans in Somalia, or that the risk alleged is a risk of torture as defined in the Convention.

4.10 The State party points to the existing domestic safeguards which ensure that genuine applicants for asylum and for visas on humanitarian grounds are given protection and through which the author has been given ample possibilities to present his case, as described below. In the primary stage of processing an application for a protection visa, a case officer from the Federal Department of Immigration and Multicultural Affairs examines the claim against the provisions of the Convention relating to the Status of Refugees. When there are claims which relate to the Convention against Torture and further clarification is required, the officer may seek an interview, using an interpreter if necessary. Applicants must be given

[b] Communication No. 83/1997, *G.R.B. v. Sweden*, 15 May 1998, at para. 6.5.

[c] Herman Burgers and Hans Danelius, *The United Nations Convention against Torture: A Handbook on the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (1988).

[d] Ibid.

[e] Ibid.

[f] Ibid.

[g] E/CN.4/L.1470, para.18.

the opportunity to comment on any adverse information, which will be taken into account when their claim is considered. Assessments of claims for refugee protection are made on an individual basis using all available and relevant information concerning the human rights situation in the applicant's home country. Submissions from migration agents or solicitors can also form part of the material to be assessed.

4.11 The State party further explains that if an application for a protection visa is refused at the primary stage, a person can seek review of the decision by the Refugee Review Tribunal, an independent body with the power to grant a protection visa. The Refugee Review Tribunal also examines claims against the Convention relating to the Status of Refugees. If the Tribunal intends to make a decision that is unfavourable to the applicant on written evidence alone, it must give the applicant the opportunity of a personal hearing. Where there is a perceived error of law in the decision of the Tribunal, a further appeal may be made to the Federal Court for judicial review.

4.12 The Department of Immigration and Multicultural Affairs provides for application assistance to be given to eligible protection visa applicants. Under this scheme, all asylum-seekers in detention have access to contracted service providers who assist with the preparation of the application form and exposition of their claims, and attend any interview. If the primary decision by the Department is to refuse a protection visa, the service providers may assist with any further submissions to the Department and any review applications to the Review Tribunal.

4.13 The State party draws the attention of the Committee to the fact that, in the present case, the author had the assistance of a migration agent in making his initial application and that an interview was conducted with him by an officer of the Department of Immigration and Multicultural Affairs with the assistance of an interpreter. In addition, during the course of the review by the Review Tribunal of the primary decision, the author attended two days of hearings before the Tribunal, during which he was also assisted by an interpreter. He was not represented by a migration agent at the hearing, but the State party takes the view that legal representation before the Tribunal is not necessary, as its proceedings are non-adversarial in nature.

4.14 The State party submits that neither the Department of Immigration and Multicultural Affairs nor the Refugee Review Tribunal was satisfied that the author had a well-founded fear of persecution, because he failed to show that he would be persecuted for a reason pertaining to the Convention relating to the Status of Refugees. In particular, although the Review Tribunal accepted that the author was a member of the Shikal clan and that, at the beginning of the conflict in Somalia, his father and one brother had been killed and one sister had committed suicide, it found that the author had not shown that he would be targeted personally if returned to Somalia. It found that the alleged victim had, at times, had to flee the civil war in Somalia but that this was not sufficient to show persecution for a reason pertaining to the Convention relating to the Status of Refugees.

4.15 The alleged victim sought judicial review of the decision of the Review Tribunal in the High Court of Australia, on the basis that the Tribunal had erred in law and that its decision was unreasonable. He also sought an order restraining the Minister for Immigration and Multicultural Affairs from removing him from Australia until his application was decided. On 16 November 1998, Justice Hayne of the High Court dismissed all the grounds of appeal, rejecting the argument that the Tribunal had erred in law or that its decision was unreasonable. Further, he rejected the application to restrain the Minister of Immigration and Multicultural Affairs from removing the author. Subsequently, on 17 November 1998, the author lodged a communication with the Committee. The Committee requested the State party not to remove the author until his case had been examined. Following such request,

the State party interrupted the author's removal. The State party understands that on 25 November 1998 the author applied for special leave to appeal the decision of Justice Hayne to the Full Bench of the High Court of Australia.

4.16 In addition to the procedures established to deal with claims of asylum pursuant to Australia's obligations under the Convention relating to the Status of Refugees, the Minister for Immigration and Multicultural Affairs has a discretion to substitute a decision of the Refugee Review Tribunal with a decision which is more favourable to the applicant, for reasons of public interest. All cases which are unsuccessful on review by the Tribunal are assessed by the Department of Immigration and Multicultural Affairs on humanitarian grounds, to determine if they should be referred to the Minister for consideration of the exercise of his or her humanitarian stay discretion. Cases are also referred to the Minister under this section on request by the applicant or a third party on behalf of the applicant. In the present case, the Minister was requested to exercise his discretion in favour of the author, but the Minister declined to do so. The author also requested that the Minister exercise his discretion to allow him to lodge a fresh application for a protection visa, but, on the recommendation of the Department of Immigration and Multicultural Affairs, the Minister again declined to consider exercising his discretion.

4.17 The State party notes that in the course of the asylum procedure, the author has not provided factual evidence to support his claims. Furthermore, the State party does not accept that, even if those assertions were correct, they necessarily would lead to the conclusion that he would be subjected to "torture" as defined in the Convention. In making this assessment, the State party has taken into account the jurisprudence of the Committee establishing that a person must show that he or she faces a real, foreseeable and personal risk of being subjected to torture, as well as the existence of a consistent pattern of gross, flagrant or mass violations of human rights.

4.18 The State party does not deny that the attacks on the author's father, brother and sister occurred as described by the author, nor that at that time and immediately afterwards the author may have felt particularly vulnerable to attacks by the Hawiye clan and that this fear may have caused the author to flee Mogadishu (but not Somalia). However, there is no evidence that the author, at present, would face a threat from the Hawiye clan if he were returned to Somalia. Moreover, in the absence of any details or corroborating evidence of his alleged escapes and in the absence of any evidence or allegations to the effect that the author has previously been tortured, it must be concluded that the author remained in Somalia in relative safety throughout the conflict. The State party points out that it is incumbent upon the author of a communication to present a factual basis for his allegations. In the present case the author has failed to adduce sufficient evidence of an ongoing and real threat of torture by the Hawiye against him and other members of the Shikal clan.

4.19 The State party accepts that there has been a consistent pattern of gross, flagrant or mass violations of human rights in Somalia and that, throughout the armed conflict, members of small, unaligned and unarmed clans, like the Shikal, have been more vulnerable to human rights violations than members of the larger clans. However, through diplomatic channels, the State party has been informed that the general situation in Somalia has improved over the past year and, although random violence and human rights violations continue and living conditions remain difficult, civilians are largely able to go about their daily business. The State party has also been informed by its embassy in Nairobi that a small community of Shikal still resides in Mogadishu and that its members are apparently able to practise their trade and have no fear of being attacked by stronger clans. However, as an unarmed clan, they are particularly vulnerable to looters. Although the Shikal, including members of the author's family, may have been targeted by the Hawiye in the early stages of the Somali

conflict, they have at present a harmonious relationship with the Hawiye in Mogadishu and elsewhere, affording a measure of protection to Shikal living there.

4.20 The State party points out that it has also considered the issue of whether the author would risk being targeted by other clans than the Hawiye. It states that it is prepared to accept that certain members of unarmed clans and others in Somalia suffer abuse at the hands of other Somali inhabitants. Further, the author may be more vulnerable to such attacks as he is a member of an unarmed clan whose members are generally believed to be wealthy. However, the State party does not believe that the author's membership of such a clan is sufficient to put him at a greater risk than other Somali civilians. In fact, the State party believes that many Somalis face the same risk. That view is supported by the report of its embassy in Nairobi, which states that "(a)ll Somalis in Somalia are vulnerable because of lack of a functioning central government authority and an effective rule of law. [The author's] situation, were he to return to Somalia, would not be exceptional".

4.21 In the event that the Committee disagrees with the State party's assessment that the risk faced by the author is not a real, foreseeable and personal one, the State party contends that such risk is not a risk of "torture" as defined in article 1 of the Convention. Although the State party accepts that the political situation in Somalia makes it possible that the author may face violations of his human rights, it argues that such violations will not necessarily involve the kind of acts contemplated in article 1 of the Convention. For example, even though the acts of extortion anticipated by the author may be committed for one of the purposes referred to in the definition of torture, such acts would not necessarily entail the intentional infliction of severe pain or suffering. In addition, the author's claims that he will risk detention, torture and possibly execution have not been sufficiently substantiated.

4.22 Finally, the State party reiterates its reasoning as to the admissibility of the case and as to the merits.

Counsel's comments

5.1 As regards the *ratione materiae* admissibility of the communication, counsel submits that despite the lack of a central government, certain armed clans in effective control of territories within Somalia are covered by the terms "public official" or "other person acting in an official capacity" as required by article 1 of the Convention. In fact, the absence of a central government in a State increases the likelihood that other entities will exercise quasi-governmental powers.

5.2 Counsel further emphasizes that the reason for limiting the definition of torture to the acts of public officials or other persons acting in an official capacity was that the purpose of the Convention was to provide protection against acts committed on behalf of, or at least tolerated by, the public authorities, whereas the State would normally be expected to take action, in accordance with its criminal law, against private persons having committed acts of torture against other persons. Therefore, the assumption underlying this limitation was that, in all other cases, States were under the obligation by customary international law to punish acts of torture by "non-public officials". It is consistent with the above that the Committee stated, in *G.R.B. v. Sweden*, that "whether the State party has an obligation to refrain from expelling a person who might risk pain or suffering inflicted by a non-governmental entity, without the consent or acquiescence of the Government, falls outside the scope of article 3 of the Convention". However, the present case is distinguishable from the latter as it concerns return to a territory where non-governmental entities themselves are in effective control in the absence of a central government, from which protection cannot be sought.

5.3 Counsel submits that when the Convention was drafted there was agreement by all States to extend the scope of the perpetrator of the act from the "public official" referred to in the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, to include "other person[s] acting in an official capacity". This would include persons who, in certain regions or under particular conditions, actually hold and exercise authority over others and whose authority is comparable to government authority.

5.4 According to a general principle of international law and international public policy, international and national courts and human rights supervisory bodies should give effect to the *realities* of administrative actions in a territory, no matter what may be the strict legal position, where those actions affect the everyday activities of private citizens. In *Ahmed v. Austria,* the European Court of Human Rights, in deciding that deportation to Somalia would breach Article 3 of the European Convention on Human Rights, which prohibits torture, stated that "fighting was going on between a number of clans vying with each other for control of the country. There was no indication that the dangers to which the applicant would have been exposed to had ceased to exist or that any public authority would be able to protect [the applicant]."[h]

5.5 In relation to Somalia, there is abundant evidence that the clans, at least since 1991, have, in certain regions, fulfilled the role, or exercised the semblance, of an authority that is comparable to government authority. These clans, in relation to their regions, have prescribed their own laws and law enforcement mechanisms and have provided their own education, health and taxation systems. The report of the independent expert of the Commission on Human Rights illustrates that States and international organizations have accepted that these activities are comparable to governmental authorities and that "[t]he international community is still negotiating with the warring factions, who ironically serve as the interlocutors of the Somali people with the outside world".[i]

5.6 Counsel notes that the State party does not wish to contest admissibility on the basis of the non-exhaustion of domestic remedies, but nevertheless wishes to emphasize that the author's communication of 17 November 1998 was submitted in good faith, all domestic remedies available to the author having been exhausted. The subsequent application by the author for special leave to appeal, which is currently pending before the Full Bench of the High Court of Australia, does not provide a basis for injunctive relief to prevent the expulsion of the author. Further, following an intervention by Amnesty International in the author's case, the Minister for Immigration and Multicultural Affairs stated that "[a]s an unlawful non-citizen who had exhausted all legal avenues to remain in Australia, my Department was required under law to remove [the author] as soon as reasonably practicable".

5.7 As to the merits of the communication, the author must establish grounds that go beyond mere "theory or suspicion"[j] that he will be in danger of being tortured. As the primary object of the Convention is to provide safeguards against torture, it is submitted that the author is not required to prove all of his claims[k] and that a "benefit of the doubt" principle may be applied. There is sufficient evidence that the author faces personal risk

[h] *Ahmed v. Austria,* Communication No. 71/1995/577/663, 27 November 1996.

[i] Report of the Independent Expert of the Commission on Human Rights, Ms. Mona Rishmawi, on the situation of human rights in Somalia, E/CN.4/1999/103, 23 December 1998, para. 154.

[j] Communication No. 101/1997, *Halil Haydin v. Sweden,* 16/12/98, CAT/C/21/D/101/1997, para. 6.5.

[k] Communication No. 34/1995, *Seid Mortesa Aemei v. Switzerland,* 29/5/1998, CAT/C/18/D/34/1995, para. 9.6.

of being subjected to torture upon his return owing to his membership of the Shikal clan and his belonging to a particular family.

5.8 Counsel contests the State party's argument that the author had in fact been able to live in Somalia since the outbreak of the war in "relative safety" and submits an affidavit from the author stating that, as an elder of the Shikal clan, his father had been prosecuted by the Hawiye clan, especially since he had categorically refused to provide money and manpower for the war. Even before the outbreak of the war there had been attempts on the author's father's life by the Hawiye clan. The family was told by the Hawiye that they would suffer the consequences of their refusal to provide support to the clan, once the Hawiye came into power in Mogadishu. The author states that he was staying at a friend's house when the violence broke out in December 1990 and he learned that his father had been killed during an attack by the Hawiye clan. Only hours after his father's death, the Hawiye planted and detonated a bomb under the family home, killing one of the author's brothers. The author's mother, other brothers and his sisters had already fled the house.

5.9 The author also states that, together with the remaining family members, he escaped to the town of Medina, where he stayed during 1991. The Hawiye clan attacked Medina on a number of occasions and killed Shikal members in brutal and degrading ways. The author states that hot oil was poured over their heads, scalding their bodies. Sometimes, when they received warnings about Hawiye raids, the family would flee Medina for short periods of time. On one occasion, upon returning after such a flight, the author learned that the Hawiye militia had searched the town with a list of names of people they were looking for, including the author and his family. After one year of constant fear the family fled to Afgoi. On the day of the flight, the Hawiye attacked again and the author's sister was raped for the second time by a member of the militia. In December 1992, the author heard that the United Nations was sending troops to Somalia and that the family would be protected if they returned to Mogadishu. However, the author and his family only returned as far as Medina, since they heard that the situation in Mogadishu had in fact not changed.

5.10 After another year in Medina, the family once again fled to Afgoi and from there to Ugunji, where they stayed for two years in relative peace before the Hawiye arrived in the area and enslaved the members of minority clans and peasants living there, including the author. The indigenous villagers also had pale skin, therefore the militia never questioned the author and his family about their background. However, when the family learned that Hawiye elders were coming to the village they once again fled, knowing that they would be recognized. In the course of the following months the author went back and forth between Medina and Afgoi. Finally, the family managed to leave the country by truck to Kenya.

5.11 In addition to the grounds previously mentioned, the risk to the author is increased by the national and international publicity which his particular case has received. For example, Amnesty International has issued an Urgent Action in the name of the author; Reuters news agency, the BBC Somali Service and other international media have reported on the suspension of the author's expulsion following the request of the Committee; the independent expert of the United Nations Commission on Human Rights has appealed in the author's case and made reference to it both in her report to the United Nations Commission on Human Rights and in oral statements indicating that "[a] case currently pending in Australia concerning a forced return to Mogadishu of a Somali national is particularly alarming, due to the precedent it will create in returning individuals to areas undergoing active conflict."[1]

[1] Oral statement delivered on 22 April 1999 before the Commission on Human Rights, on the situation of human rights in Somalia

5.12 Counsel also submits that the danger of torture faced by the author is further aggravated owing to the manner in which the State party intends to carry out his return. According to the return plan, the author is to be delivered into the custody of private security "escorts" in order to be flown to Nairobi via Johannesburg and then continue unescorted from Nairobi to Mogadishu. Counsel submits that if the author were to arrive unescorted in North Mogadishu, at an airport which tends to be used only by humanitarian relief agencies, warlords and smugglers and which is controlled by one of the clans hostile to the Shikal, he would be immediately identifiable as an outsider and would be at increased risk of torture. In this context counsel refers to written interventions from various non-governmental sources stating that a Somali arriving in Mogadishu without escort or help to get through the so-called "authorities" would in itself give rise to scrutiny.

5.13 With reference to the State party's comments regarding the author's credibility, counsel underlines that throughout the author's application for refugee status, the credibility of the author or his claims have never been an issue. RRT accepted the author's case as claimed and clearly found the applicant a credible witness.

5.14 Counsel underlines that there is evidence of a consistent pattern of gross, flagrant or mass violations of human rights in Somalia, although the lack of security has seriously compromised the ability of human rights monitors to document comprehensively individual cases of human rights abuses, including torture. The absence of case studies concerning torture of persons with similar "risk characteristics" as the author cannot therefore lead to the conclusion that such abuses do not occur, in accordance with reports from, *inter alia*, the Independent Expert of the Commission on Human Rights on the human rights situation in Somalia, UNHCR, the United Nations Office for the Coordination of Humanitarian Affairs and Amnesty International. Counsel further underlines that the author is a member of a minority clan and hence is recognized by all sources as belonging to a group at particular risk of becoming the victim of violations of human rights. The State party's indication of the existence of an agreement between the Shikal and Hawiye clans affording some sort of protection to the Shikal is categorically refuted by counsel on the basis of information provided by reliable sources, and is considered as unreliable and impossible to corroborate.

5.15 Finally, counsel draws the attention of the author to the fact that although Somalia acceded to the Convention on 24 January 1990, it has not yet recognized the competence of the Committee to receive and consider communications from or on behalf of individuals under article 22. If returned to Somalia, the author would no longer have the possibility of applying to the Committee for protection.

Issues and proceedings before the Committee

6.1 The Committee notes the information from the State party that the return of the author has been suspended, in accordance with the Committee's request under rule 108, paragraph 9 of its rules of procedure.

6.2 Before considering any claims contained in a communication, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention. In this respect the Committee has ascertained, as it is required to do under article 22, paragraph 5 (a) of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement. The Committee further notes that the exhaustion of domestic remedies is not contested by the State party. It also notes the State party's view that the communication should be declared inadmissible *ratione materiae* on the basis that the Convention is not applicable to the facts alleged, since the acts the author will allegedly face if he is returned to Somalia do not fall within the definition of "torture" set out in article 1 of the Convention. The Committee, however, is of the opinion

that the State party's argument raises a substantive issue which should be dealt with at the merits and not the admissibility stage. Since the Committee sees no further obstacles to admissibility, it declares the communication admissible.

6.3 Both the author and the State party have provided observations on the merits of the communication. The Committee will therefore proceed to examine those merits.

6.4 The Committee must decide whether the forced return of the author to Somalia would violate the State party's obligation, under article 3, paragraph 1 of the Convention, not to expel or return (*refouler*) an individual to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture. In order to reach its conclusion the Committee must take into account all relevant considerations, including the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights. The aim, however, is to determine whether the individual concerned would personally risk torture in the country to which he or she would return. It follows that the existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute sufficient grounds for determining whether the particular person would be in danger of being subjected to torture upon his return to that country; additional grounds must be adduced to show that the individual concerned would be personally at risk. Similarly, the absence of a consistent pattern of gross violations of human rights does not mean that a person cannot be considered to be in danger of being subjected to torture in his or her specific circumstances.

6.5 The Committee does not share the State party's view that the Convention is not applicable in the present case since, according to the State party, the acts of torture the author fears he would be subjected to in Somalia would not fall within the definition of torture set out in article 1 (i.e. pain or suffering inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity, in this instance for discriminatory purposes). The Committee notes that for a number of years Somalia has been without a central government, that the international community negotiates with the warring factions and that some of the factions operating in Mogadishu have set up quasi-governmental institutions and are negotiating the establishment of a common administration. It follows then that, de facto, those factions exercise certain prerogatives that are comparable to those normally exercised by legitimate governments. Accordingly, the members of those factions can fall, for the purposes of the application of the Convention, within the phrase "public officials or other persons acting in an official capacity" contained in article 1.

6.6 The State party does not dispute the fact that gross, flagrant or mass violations of human rights have been committed in Somalia. Furthermore, the independent expert on the situation of human rights in Somalia, appointed by the Commission on Human Rights, described in her latest report the severity of those violations, the situation of chaos prevailing in the country, the importance of clan identity and the vulnerability of small, unarmed clans such as the Shikal, the clan to which the author belongs.[m]

6.7 The Committee further notes, on the basis of the information before it, that the area of Mogadishu where the Shikal mainly reside, and where the author is likely to reside if he ever reaches Mogadishu, is under the effective control of the Hawiye clan, which has established quasi-governmental institutions and provides a number of public services. Furthermore, reliable sources emphasize that there is no public or informal agreement of protection between the Hawiye and the Shikal clans and that the Shikal remain at the mercy of the armed factions.

[m] E/CN.4/1999/103.

6.8 In addition to the above, the Committee considers that two factors support the author's case that he is particularly vulnerable to the kind of acts referred to in article 1 of the Convention. First, the State party has not denied the veracity of the author's claims that his family was particularly targeted in the past by the Hawiye clan, as a result of which his father and brother were executed, his sister raped and the rest of the family was forced to flee and constantly move from one part of the country to another in order to hide. Second, his case has received wide publicity and, therefore, if returned to Somalia the author could be accused of damaging the reputation of the Hawiye.

6.9 In the light of the above the Committee considers that substantial grounds exist for believing that the author would be in danger of being subjected to torture if returned to Somalia.

7. Accordingly, the Committee is of the view that, in the prevailing circumstances, the State party has an obligation, in accordance with article 3 of the Convention, to refrain from forcibly returning the author to Somalia or to any other country where he runs a risk of being expelled or returned to Somalia.

8. Pursuant to rule 111, paragraph 5, of its rules of procedure, the Committee would wish to receive, within 90 days, information on any relevant measures taken by the State party in accordance with the Committee's present views.

[Done in English, French, Russian and Spanish, the English being the original version.]

B. Decisions

1. Communication No. 62/1996

Submitted by: E.H. (name withheld)
[represented by counsel]

Alleged victim: The author

State party: Hungary

Date of communication: 29 October 1996

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 10 May 1999,

Adopts the following:

Decision on admissibility

1. The author of the communication is E.H., born on 20 October 1976, a Turkish citizen belonging to the Kurdish minority, currently residing in Hungary where he has applied for asylum. He alleges that his forced return to Turkey would constitute a violation by Hungary of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The author is represented by the Hungarian Helsinki Committee, a non-governmental organization based in Budapest.

Facts as submitted by the author

2.1 The author states that on 12 March 1992 he participated in a demonstration organized on the occasion of a Kurdish celebration. The event degenerated into violence and Turkish security forces arrested several demonstrators, including the author, who were held in

detention for seven months awaiting trial. The author alleges that he was tortured twice during that period. Since no witnesses heard during the court proceedings could identify him the author was released following the trial. He was nevertheless placed under police surveillance.

2.2 In 1993 the author joined the armed wing of the Kurdistan Worker's Party (PKK) and underwent six months of combat training. As the head of a unit comprising 70 combatants he was involved in military activities in south-eastern Turkey until October 1995. By then, the author's superior officer had committed suicide. The new commander held his subordinate officers responsible for the incident and ordered two squadron commanders, including the author, to be executed. The author states that he fled the unit to escape arbitrary execution, and because he had come to doubt the PKK ideology.

2.3 The author states that he first went into hiding in Istanbul but, fearing persecution by both the PKK and the Turkish authorities, he managed to obtain a false passport and to flee to Bulgaria, where he arrived in November 1995. He spent two weeks in Bulgaria and then went to Romania. After two months he attempted to go to Austria via Hungary, but was arrested by Hungarian border police when trying to cross the border illegally. Subsequently, he applied for asylum.

2.4 On 3 March 1996, the Aliens Police Department of the Győr Border Guards Directorate issued an expulsion order against the author. The execution of the expulsion order was by the same decision suspended given the fact that the author had applied for asylum.

2.5 On 3 July 1996, the Bicske local agency of the Office for Refugees and Migration Affairs denied the author asylum, on the grounds that he had no reason to fear discrimination or persecution by the Turkish authorities. According to the Office, the author's trial and detention and the feared revenge of the PKK did not constitute persecution as defined in the 1951 Convention relating to the Status of Refugees.

2.6 The author submitted an appeal to the second instance of the Office for Refugees and Migration Affairs which was rejected on 16 September 1996. In its decision the Office referred to the exclusion clause in article 1, section F, of the 1951 Convention and stated that, as a high-level officer of a terrorist organization, the author was not entitled to protection as a refugee. The author argues that the decision was based primarily on a statement made by the Budapest Branch of UNHCR which did not take sufficient care in the case and delivered a summary opinion without having interviewed the applicant or tried to know as much as possible about the case.

2.7 On 30 September 1996, the author lodged an application for review of the administrative decision with the Pest Central District Court, on the grounds that the Office for Refugees and Migration Affairs had, *inter alia*, not proceeded with due care in the examination of the case and that it had not taken into account article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. On 10 October 1996, the Pest Central District Court rejected the author's request and found that the administrative authorities had acted in accordance with existing procedural regulations.

2.8 On 29 October 1996 the Aliens Police Department of the Győr Border Guards Directorate annulled the pending expulsion order and the prohibition of stay and entry into Hungary against the author on the grounds that the decision ordering expulsion had been taken in violation of the existing procedure, prior to a final decision regarding the author's application for asylum.

2.9 On 6 November 1996, the author further appealed for judicial review to the Budapest Municipal Court, referring to the fact that the reasoning in the administrative decisions of the first and second instance was entirely different, which proved that the facts of the case

had not been properly examined. Furthermore, in his appeal the author underlined that during the administrative examination of his case, a final expulsion order against him had been pending. According to the author, the expulsion order contravened article 32, paragraph 1, of the Aliens Act which stipulates that "(n)o alien shall be refouled or expelled to a country or to the frontiers of a territory where he would be threatened with persecution on account of his race, religion, nationality, membership of a social group or political opinion, or to the territory of a state or frontiers of a territory where there are substantial grounds for believing that the refouled or expelled aliens would be subjected to torture, inhuman or degrading punishment ...". The author maintained that the unlawfulness of the expulsion order had not been examined by the Office for Refugees and Migration Affairs. At the time of the author's initial submission to the Committee, the appeal for judicial review was still pending before the Budapest Municipal Court.

Complaint

3.1 The author submits that Turkey is a country where torture is systematically practised and that there are substantial grounds for believing that he would be subjected to torture, inhuman or degrading treatment or punishment in view of his past imprisonment and treatment as well as his subsequent involvement with the armed wing of the PKK.

3.2 The author claims that the Hungarian immigration authorities have not examined his case and the conditions prevailing in his country of origin with the necessary care. The judicial authorities took into consideration the Convention relating to the Status of Refugees, as incorporated in domestic law, but not the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its absolute prohibition of return or expulsion of a person to a State or to the frontiers of a territory where there is danger that the person would be subjected to torture or other cruel, degrading or inhuman treatment.

3.3 The author further claims that the appeal for judicial review, pending at the time of his initial submission to the Committee, could not be considered as an effective remedy since the review by Hungarian courts of administrative decisions is limited to examining whether there has been a violation of procedure or substantive domestic legal regulations and the international practice is not taken into account. If the rejection of his application for asylum is confirmed he could theoretically nevertheless be granted temporary permission to stay in the country, in accordance with the principle of non-refoulement. However, the author draws the attention of the Committee to the fact that aliens who cannot be expelled solely on the basis of non-refoulement have no further rights, including to employment, income or social benefits, or temporary residence permits.

State party's observations on the admissibility of the communication

4.1 On 14 February 1997 the Committee transmitted the communication to the State party for comments. The State party challenged the admissibility of the communication in submissions dated 18 November 1998 and 14 December 1998.

4.2 The State party explains that the basic provisions concerning the right of aliens to enter or to remain in Hungary are contained in the Act of 1993 on the Entry, Stay in Hungary and Immigration of Foreigners (Aliens Act), section 27 of Government Decree No. 64/1994 and section 44 of Minister of Interior Decree No. 9/1994. It submits that since the lodging of the author's communication, Act CXXXIX on Asylum (1997) and several ministerial decrees have been enacted. As a result, it can be asserted that the Hungarian legal system does provide for an effective protection against refoulement and ensure the enforcement of the provisions of the Convention.

4.3 The State party states that the author crossed the Hungarian-Romanian border illegally on 20 February 1996. His purpose was to continue, via Austria, to Germany, where he has relatives. On 1 March 1996, he was arrested by Hungarian border guards upon attempting to cross the Hungarian-Austrian border with false documents. The Alien Police Department of the Győr Border Guard Directorate seized the documents and sent them to the agencies that had apparently issued them through the Ministry for Foreign Affairs. On 3 March 1996, the Directorate issued an expulsion order effective 7 March 1996. The author submitted an application to the asylum authorities, after which the Directorate suspended the implementation of the expulsion order.

4.4 Throughout the Hungarian immigration process, the author essentially advanced the same allegations as those he is putting forward in support of his communication to the Committee. In its decision of 4 April 1996, the Budapest Local Agency of the Office for Refugees and Migration Affairs, the asylum authority of the first instance, found that the author's application for asylum was motivated by his collaboration with the PKK and his fear of reprisals, and not by fear of discrimination or persecution by the Turkish authorities. His application was therefore denied.

4.5 The State party confirms the author's account of the asylum procedure, i.e. that the second instance of the Office for Refugees and Migration Affairs rejected the author's appeal on 16 September 1996 and that his application for judicial review to the Pest Central District Court was denied on 10 October 1996.

4.6 It is further submitted that at the time of the author's submission to the Committee, his appeal for judicial review was still pending before the Budapest Municipal Court. The Court rejected the appeal on 23 January 1997 on the grounds, *inter alia*, that it did not contain any new circumstances that would warrant alteration of the ruling of the court of first instance and that the administrative authorities had correctly applied the law when rejecting the author's asylum claim.

4.7 The author initiated additional procedures before the Hungarian immigration authorities. Thus, on 21 May 1998, he submitted a new application for asylum to the Győr Department of the Office of Refugee and Migration Affairs which was denied on 10 July 1998 on the grounds that it did not contain any new elements with respect to his former application. The State party points out that an application for review of that decision is pending.

4.8 As to the expulsion order issued against the author, the State party explains that prior to the completion of the first judicial review procedure, the Alien Police Department of the National Headquarters of the Border Guard examined the case of the author ex officio. It annulled the expulsion order issued by the Alien Police Department of the Győr Border Guard Directorate, on the grounds that the Directorate had acted in error since, pursuant to the Aliens Act, expulsion cannot be ordered against aliens who apply for asylum unless their applications have been rejected in a final decision. The State party underlines that the expulsion order was annulled before the date of the author's initial submission to the Committee.

4.9 On 24 May 1997, following the final rejection of the author's application for asylum, the Office of Refugee and Migration Affairs informed the Alien Police authorities that despite the fact that the author had not been granted asylum, the Office considered that at present the author could not be returned to his country of origin based on the provisions of section 32 (1) of the Aliens Act. According to those provisions no alien shall be refouled or expelled to a country or to the frontiers of a territory where he would be threatened with persecution on account of his race, religion, nationality, membership of a social group or political opinion, or to the territory of a State or frontiers of a territory where there are

substantial grounds for believing that the refouled or expelled aliens would be subjected to torture, inhuman or degrading punishment. On the basis of the statement of the Office for Refugee and Migration Affairs, the Alien Police authorities issued a temporary certificate allowing the author to stay in the country.

4.10 The State party underlines that, apart from refugee status, the law provides other possibilities for an alien to stay in Hungary. In the present case, although denied asylum, the author was accorded temporary permission to stay in accordance with the principle of non-refoulement. The State party admits that the author's comments regarding deficiencies relating to the regulation of temporary permission to stay were in fact well founded, but draws the attention of the Committee to the fact that, since the submission of the author's complaint, new legislation has been adopted in that respect. Act CXXXIX on Asylum, which entered into force on 1 March 1998, contains provisions on the admission of refugees and the recognition of persons under temporary protection in accordance with European standards. Governmental Decrees Nos. 24 and 25 (II.18) Korm. of 1998 on the implementation of the Act contains detailed rules relating to, *inter alia*, persons under temporary protection and persons authorized to stay, and defines the various forms of benefits and assistance for aliens applying for asylum, recognized refugees, persons under temporary protection and persons authorized to stay.

4.11 In conclusion, the State party submits that the domestic legal framework of Hungary contains guarantees for the protection of the rights of asylum-seekers in accordance with European standards and the international obligations undertaken by Hungary. In addition, the State party considers that the complaint of the author is unfounded, and that the communication should be considered inadmissible due to non-exhaustion of domestic remedies.

Counsel's comments

5.1 With respect to the exhaustion of domestic remedies, counsel submits that no national procedures are currently pending, since the author's application for review of the decision by the Győr Department of the Office of Refugee and Migration Affairs was rejected on 6 January 1999.

5.2 Counsel further states that although the legal environment in Hungary concerning the rights to asylum and the refugee determination procedure has undergone substantial positive changes, the case under consideration has not been affected by those changes and the author can still not benefit from protection by the Hungarian authorities. The author submitted one application to the Office for Refugee and Migration Affairs and one to the Capital Court after 1 March 1998, when the new Act on Asylum entered into force. They were both rejected, on the basis that the author had relied on the same factual reasons as in his earlier applications. Counsel claims, however, that neither the first, nor the second refugee determination procedure examined the treatment and possible punishment in Turkey of rejected and subsequently returned Kurdish asylum-seekers who have allegedly been members of the PKK.

5.3 The Hungarian legal system contains guarantees for the enforcement of the provisions of the Convention and other human rights treaties. Under the new Act on Asylum the author could indeed benefit from protection against refoulement by being granted "authorised to stay" status. That status provides protection to persons who would, for example, face treatment contrary to article 3 of the Convention. The examination of whether a foreigner, if expelled from Hungary, would have to face, *inter alia*, the threat of treatment contrary to article 3 of the Convention is carried out ex officio by the Office for Refugee and Migration Affairs. However, in its decision of 20 July 1998 the Office did not mention

whether the prohibition of refoulement applied in the author's case, although it is its practice to include a statement concerning the possibility of refoulement in decisions rejecting recognition of an applicant as a refugee.

5.4 Although the refugee determination procedure ended with the decision of 6 January 1999, the author is unaware of a new expulsion procedure initiated in his case. Even if the examination of non-refoulement grounds were carried out, which may result in the finding that he may not be returned to Turkey, his status and legal situation in Hungary would remain unresolved. The applicant would be issued a certificate entitling temporary residence, which is not equal to a residence permit. He would not be entitled to a work permit or to social benefits. This legal "limbo" would in itself constitute inhuman and degrading treatment contrary to the Convention.

5.5 With respect to the State party's argument that the expulsion order was already annulled at the time of the initial submission, counsel contends that the decision of the Alien Police Department was communicated to the author after he had filed the communication with the Committee. Had there not been an expulsion order in force at that time, it would have been senseless for the author to lodge the complaint.

Issues and proceedings before the Committee

6.1 Before considering any of the allegations in a communication, the Committee against Torture must decide whether or not the communication is admissible under article 22 of the Convention.

6.2 The Committee notes the State party's assertion that on 24 May 1997, following the rejection of the author's first application for asylum, the Office of Refugee and Migration Affairs informed the Alien Police authorities that, despite the fact that the author had not been granted asylum, the Office considered that he could not be returned to his country of origin. It also notes that, on the basis of that statement, the Alien Police issued a certificate allowing the author to stay in the country temporarily. The Committee finds that the information provided by the author does not show that the above-mentioned certificate is not valid at the present time. The Committee further notes that the author is unaware of an expulsion procedure being initiated against him after the final judicial decision rejecting his second application for asylum. In the circumstances, the Committee considers that the author is in no immediate danger of expulsion and, therefore, the communication, as it stands, is inadmissible under article 22, paragraph 2, of the Convention as incompatible with the provisions of article 3 of the Convention.

7. Accordingly, the Committee decides:

(a) That the communication is inadmissible;

(b) That this decision may be reviewed under rule 109 of the Committee's rules of procedure upon receipt of a request by or on behalf of the author containing information to the effect that the reasons for inadmissibility no longer apply;

(c) That this decision shall be communicated to the State party, the author and his representative.

[Done in English, French, Russian and Spanish, the English text being the original version.]

2. Communication No. 66/1997

Submitted by: P.S.S. (name withheld)
[represented by counsel]

Alleged victim: The author

State party: Canada

Date of communication: 5 May 1997

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 13 November 1998,

Adopts the following:

Decision on admissibility

1. The author of the communication is P.S.S., an Indian citizen currently residing in Canada where he is seeking asylum. He claims that his forced return to India would constitute a violation by Canada of article 3 of the Convention against Torture. He is represented by counsel.

Facts as presented by the author

2.1 P.S.S. was born in 1963 in Chandigarh, India. In 1982, he became a member of the All India Sikh Students Federation. On an unspecified date, P.S.S. and other men of that group were pointed out to hijack an aircraft, divert it to another country and hold a press conference in order to highlight the situation of the Sikh population in Punjab, India. The hijacking was planned in reaction to an assault by the Indian Government launched in June 1984 upon Darbar Sahib, also known as the Golden Temple in Amritsar. On 5 July 1984, P.S.S. and the other men hijacked an Air India aircraft in Srinigar which carried about 250 passengers and diverted it to Lahore in Pakistan, where they held a press conference. Thereafter the hijackers released all the persons on board the aircraft and surrendered themselves to the Pakistani authorities. According to the author, with the exception of two minor injuries, no one was harmed or seriously injured in the course of the hijacking.

2.2 In January 1986 the author was convicted of hijacking and sentenced to death by a Pakistani court. In 1989, the death sentence was commuted to life imprisonment. On 21 March 1994 the author was released from prison on medical grounds. He remained in Pakistan until 21 January 1995, when he was granted full parole. He and the other hijackers were given three months to leave the country.

2.3 In January 1995 the author applied to the Canadian immigration authorities for entry into the country but his application was rejected. Later on he travelled to Canada with a false Afghan passport and under the false name of B.S. In a form which he was required to fill in when entering the country he denied having been convicted of a crime. In September 1995 he was arrested by the Canadian Immigration Service and placed in custody. On 27 October 1995, a conditional deportation order was issued by the Immigration and Refugee Board. He was also given notice under section 46.01 (e) of the Immigration Act that the Minister of Citizenship and Immigration intended to certify the author as being a danger to the public in Canada. Such certification would render the author ineligible to make a refugee claim in Canada.

2.4 The author was certified as a danger to the public in June 1996. He then challenged the certification by judicial review on the basis of procedural unfairness. The Federal Court

rescinded the certification on those grounds. In October 1996 a new certification process started as a result of which the Minister certified, by decision of 30 April 1997, that the author was a danger and an order was issued to remove him from Canada on 5 May 1997.

Complaint

3.1 The author argues that he would be in serious danger of being subjected to torture if he was deported to India. He submits that those persons who are known to have acted for Sikh nationalists are persecuted by the authorities in Punjab and that although violence in Punjab is said to be reduced, members of the All India Sikh Student's Federation and their families continue to be harassed in Punjab. He asserts that two of the hijackers who were released from custody and attempted to return to India were killed by the Indian Border Security Forces after they crossed the border on 27 June 1996. K.S.S., a member of the Student's Federation who was involved in a second hijacking in August 1994 was found dead in a canal in Rajastan. Presumably K.S.S. either was extrajudicially executed or died as a result of torture by the Punjab police.

3.2 He states that because of his involvement in the hijacking the author's family has been persecuted by the Punjab police. They were arrested after the hijacking took place and his mother has repeatedly been harassed by the Punjab police who questioned her about other Sikh nationalists and threatened her with detention and disappearance. In October 1988 she flew to Canada where she was granted refugee status in 1992. The author also submits that his brother, T.S.S., was held in illegal detention and subjected to gross ill-treatment by the Punjab police between 26 March and 2 May 1988. During that time he was questioned about his brother and the latter's friends. He was released without charge and granted political asylum in Canada in 1992.

3.3 The author further argues that there are grounds for assuming that he is wanted in India. He reports that the names of those persons who have come to the attention of the authorities are contained in a list which circulates among the police forces in India. Persons who appear on that list are routinely taken into custody and are targets for illegal detention, torture and extortion if they are believed to have worked for armed Sikh nationalists. Notwithstanding the fact that he almost served 10 years in jail, the author believes that his name will appear on such a list. The author also notes that apparently Indian authorities monitor the return to India of those persons who failed to obtain political asylum in other countries.

3.4 The author argues that he could not escape the danger of being subjected to torture by fleeing to other parts of India. Reportedly the Punjab police has made several forays into other Indian states in order to pursue their targets. It is further stated that neither in Pakistan would he be safe.

3.5 The author claims that both the certification of his being a danger to the public and the decision on his removal from Canada constitute a violation of article 3, paragraph 1, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The certification renders him ineligible to make an application to the panel of the Convention Refugee Determination Division of the Immigration Review Board for refugee status under the United Nations Convention on Refugees of 1951 and as a result exposes him to the risk of removal from Canada. He further submits that there are no reasons which would justify the certification since he is no longer a member of the All India Sikh Student's Federation and, apart from the 1994 hijacking, he did not commit any other crime or criminal offence. As to the decision to remove him from Canada, the author draws attention to the fact that India has not ratified the Convention against Torture and, therefore, he would not have any possibility to apply to the Committee from India. He notes that the

other convicted hijackers have been granted temporary residence in Switzerland, one was granted asylum in Germany in April 1997 and another one who went to Canada was not held in detention and certified as a danger to the public.

State party's observations on admissibility

4.1 On 5 May 1997 the Committee, acting through its Special Rapporteur for new communications, transmitted the communication to the State party for comments and requested the State party not to expel or deport the author to India while his communication was under consideration by the Committee.

4.2 In its response of 15 October 1997 the State party contested the admissibility of the communication. It states that the author entered Canada illegally. He misrepresented himself at the port of entry producing an Afghan passport and claimed refugee status. In his refugee claim form, completed with his counsel, as well as in an interview with an Immigration Examining Officer on 3 February 1995 he maintained his false identity and indicated having no criminal convictions. Nor did he indicate his membership in any terrorist organization.

4.3 The author was arrested by immigration authorities on 13 September 1995, when his true identity became known. On 25 October 1995 an immigration officer, pursuant to section 27 of the Immigration Act prepared a report alleging that the author was inadmissible in Canada as a person who there are reasonable grounds to believe had been convicted outside Canada of an offence that, if committed in Canada, would be punishable by a maximum term of imprisonment of 10 years or more. After a hearing, where his lawyer and an interpreter were present, an adjudicator concluded that the report was well founded and issued a conditional deportation order.

4.4 His detention, which has been reviewed on a regular basis, was maintained pursuant to the Immigration Act, according to which a person can be detained if he/she is likely to pose a danger to the public or if he/she is not likely to appear when required by the immigration authorities.

4.5 On 21 June 1996 the Minister of Immigration signed the opinion that the author was a "danger to the public". The parties agreed to review that decision. Accordingly, he was invited to make any submissions which would demonstrate that he was not a danger to the public, the element of risk of return to India or that there were compelling humanitarian and compassionate considerations which would warrant his remaining in Canada. His lawyer sent an extensive package of material and asserted that the author is not a danger to the public and that there are compelling reasons why he should be allowed to remain in Canada.

4.6 On 16 April 1997 the Minister of Immigration issued an opinion, based on the circumstances and severity of the crime for which the author was convicted, that he constitutes a "danger to the public" in Canada. As a result, the author is not eligible to have his refugee claim determined. The decision was made with due consideration for the possible risk the author might face if returned to India, a risk which was considered to be minimal.

4.7 The author, throughout his dealings with the Canadian authorities, has never showed any contrition for his past action, nor any remorse for the harm he has caused to the victims of his hijacking. He still refuses to acknowledge that he used violence and considers that he was not the aggressor.

4.8 The author filed several applications for leave to introduce a judicial review against the decisions rendered in his case. Two substantive applications remain pending. First, an application dated 30 April 1997 to review the Minister's decision of 16 April 1997 in which the Minister determined that the applicant is a danger to the public. Secondly, an application dated 30 April 1997 to review the Immigration's decision to remove the author to India.

in which the author raised arguments under the Canadian Charter of Rights and Freedoms. Joint to this application the author asked the Court to order a stay of his removal pending the consideration of the application. This stay was granted on 5 May 1997.

4.9 If the author were to succeed in his applications for leave to apply for judicial review the decision of the Federal Court Trial Division could be further appealed to the Federal Court of Appeal, if the judge of the Trial Division were to certify that the case raises a serious question of general importance. A decision of the Federal Court of Appeal can be appealed, with leave, to the Supreme Court of Canada. The author has expressed no doubts about the effectiveness and availability of those remedies. Accordingly, this communication should be dismissed for failure to exhaust domestic remedies.

4.10 The State party also argues that the communication should be declared inadmissible because the author did not establish prima facie substantial grounds to believe that his removal to India will have the foreseeable consequence of exposing him to a real and personal risk of being subjected to torture, as stated in previous jurisprudence of the Committee. A mere possibility of torture is not in itself sufficient to give rise to a breach of article 3. While Indian authorities advised the immigration officials of the author's presence in Canada there is no indication that they are particularly interested in his return or that they are presently looking for him. The Indian authorities could have requested the author's extradition, as an extradition treaty exists between Canada and India. Their decision not to have recourse to that possibility indicates that the author is not of particular interest for them. Furthermore, the document of the Indian authorities, Central Bureau of Investigation, India Interpol New Delhi, indicates that they are not looking for him.

4.11 The author's past membership to the Student's Federation cannot put him at risk today since that organization, in recent years, denounced the use of violence and committed itself to pursuing a peaceful political agenda. Considering that members of the Federation, including a convicted hijacker, are seeking election in public office, it is unlikely that the author would be subjected to persecution for his past membership in that organization.

4.12 The State party cites the United States Country Reports on Human Rights Practices for 1995 and 1996. These reports indicate that India has many of the safeguards to prevent against human rights abuses and recognizes that although significant human rights abuses do take place their severity and amount has diminished in recent years. Overall terrorist activity in the Punjab is now much reduced as are the number of disappearances and fatal encounters between Sikh militants and police/security forces.

4.13 According to the State party, the record before the Committee confirms that the article 3 standard was duly and properly considered in Canadian domestic procedures. The Committee should not substitute its own findings on whether there were substantial grounds for believing that the communicant would be in personal danger of being subjected to torture upon return, since the national proceedings disclose no manifest error or unreasonableness and were not tainted by abuse of process, bad faith, manifest bias or serious irregularities. It is for the national courts of the States parties to the Convention to evaluate the facts and evidence in a particular case. The Committee should not become a "fourth instance" competent to re-evaluate findings of fact or to review the application of domestic legislation, particularly when the same issue is pending before a domestic Court.

Counsel's comments

5.1 In his comments to the State party's submission counsel argues that the author sought a hearing in the Federal Court to obtain a stay of the deportation until the legality of the deportation order and its execution could be challenged. At the same time the author was advised that his removal would take place on 5 May 1997. The Federal Court only provided

a hearing date for the day he was to be removed. Under these circumstances and given the fact that it would not be possible for the author to file any appeals and to have the matter brought before a judge within the necessary time-frames, the author sought interim measures from the Committee. At the time the Committee assumed jurisdiction there was no assurance that an effective remedy was available. Having assumed jurisdiction the Committee ought to continue its review of the matter, despite the fact that the author was granted stay.

5.2 The author sought judicial review of the finding that he was a danger to the public but the Federal Court dismissed the application for leave on 19 January 1998. The refugee claim is barred from proceeding once the Minister certifies that the author is a danger to the public. There is absolutely no appeal from the decision of the Court denying leave. Thus, the author will not be able to have his refugee claim determined and hence there is not nor will there ever be a refugee determination for him. As a result, no risk assessment will be made since this is only conducted in the context of the refugee determination process.

5.3 At the same time the Federal Court, Trial Division, by decision dated 29 June 1998 quashed the decision of the immigration officer to execute the removal order. However, the Court did not conclude that a risk assessment had to be done. It stated that removal officers do not have jurisdiction to conduct risk assessments and make risk determinations in the course of making destination decisions. However, under section 48 of the Immigration Act removal officers have a discretion to delay the execution of a deportation order. In the Court's opinion the removal officer's failure to consider whether or not to exercise his or her discretion under section 48 of the Immigration Act, pending the conducting of an appropriate risk assessment and the making of an appropriate risk determination constituted a reviewable error. An appeal against that decision was filed by the Minister before the Federal Court of Appeal. No hearing date has been set yet. If the Minister is not successful in the appeal the matter is merely referred back to the expulsions officer for his determination as to whether or not the author's removal should be deferred pending a risk assessment. However, since the author has already been certified as a danger to the public there is no statutory requirement for a risk assessment. Therefore, this remedy cannot be considered as effective. It would then be open to the author to make an application on humanitarian and compassionate grounds. Such an application is a request for the exercise of special discretion before an immigration officer who can nevertheless consider risk.

5.4 Although the author was held in detention for a period of over two years he was ordered released by an immigration adjudicator in July 1998. Since then he has complied with all conditions for his release, has not committed any criminal offence and has not posed a danger to the public in any way.

5.5 With respect to the substantial grounds counsel argues that section 46.01 (e) (i) of the Immigration Act allows the Minister to certify a person as a "danger to the public in Canada". However, it does not require that the Minister assess risk. Although it is true that the author did make submissions with respect to risk there is no indication in any of the material that the author saw from the Minister that risk was in fact assessed. The author has not seen any documentation which would support the bare assertion by the Minister that there was a "minimal risk". If this is in fact the case it is clearly a matter that was not relevant to the certification process. In that context counsel submits that it is extremely important that the Committee make a determination as to whether or not the certification process engaged prior to the decision to execute the removal order conforms with the requirements of international law, in ensuring that persons not be sent back to situations where there are substantial risks of torture.

5.6 The author has asserted that he always was remorseful for any harm that was caused during the hijacking and denies that he himself used any violence in the attack. He submits

that he voluntarily surrendered and that none of the passengers were subjected to any harm other than minor injuries from which they quickly recovered.

5.7 Counsel insists that there is a substantial risk that the author would be exposed to torture based upon the deplorable human rights record of the Indian Government, his high profile as someone who is known to have been involved in an organization which has been strongly supportive of an independent Sikh State, the fact that he engaged in the hijacking as a means of protest and the fact that other high profile persons like the author have been detained and extrajudicially killed by the Indian authorities. The mere fact that the Central Bureau of Investigation affirms that they are not looking for him does not provide any assurance to the author that he would be safe upon return. Many innocent persons have been arrested and killed extrajudicially based upon suspicion of past connection to the militant movement.

5.8 Finally, it is not possible for the Government of India to request the extradition of the author, given that he was tried and convicted of the offence in Pakistan and that under the Indian Constitution he cannot be tried twice for the same offence.

Issues and proceedings before the Committee

6.1 Before considering any claim in a communication, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention.

6.2 Article 22, paragraph 5 (b), of the Convention precludes the Committee from considering any communication, unless it has been ascertained that all available domestic remedies have been exhausted. In the instant case the Committee notes that the author was granted temporary stay and that the Federal Court — Trial Division quashed the decision of the immigration officer to execute the removal order. The Committee also notes that an appeal filed by the Minister of Immigration against that decision is still pending before the Federal Court of Appeal. If not successful the matter would be referred back to the expulsions officer and the possibility of an application on humanitarian and compassionate grounds would be open to the author. There is nothing to indicate that the procedures still pending cannot bring effective relief to the author. The Committee is therefore of the opinion that the communication is at present inadmissible for failure to exhaust domestic remedies. In the circumstances the Committee does not consider it necessary to deal with other issues raised by the State party and the author. That will be done, if required, at a later stage.

7. The Committee therefore decides:

(a) That the communication is inadmissible;

(b) That this decision may be reviewed under rule 109 of the Committee's rules of procedure upon receipt of a request by or on behalf of the author containing information to the effect that the reasons for inadmissibility no longer apply;

(c) That this decision shall be communicated to the State party, the author and his representative.

[Done in English, French, Russian and Spanish, the English text being the original version.]

3. Communication No. 67/1997

Submitted by: E. O. Akhidenor, E. Ainabe, R. Akhidenor, J. Akhidenor, K. Akhidenor and W. Akhidenor [represented by counsel]

Alleged victim: Michael Osaretin Akhimien

State party: Canada

Date of communication: 5 December 1996

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 17 November 1998,

Adopts the following:

Decision on admissibility

1. The authors of the communication are Ms. Elizabeth Omoaluse Akhidenor, Mr. Ezekiel Ainabe, Mr. Richard Akhidenor, Ms. Jenniffer Akhidenor, Ms. Kingsley Akhidenor and Mr. William Akhidenor, citizens of Nigeria and surviving relatives and dependants of Mr. Michael Osaretin Akhimien. The authors claim that in connection with the death in detention of Mr. Akhimien and the subsequent investigation into the causes of his death, Canada has acted in violation of articles 2, 10, 11, 12, 13, 14 and 16 of the Convention. The authors are represented by counsel.

Facts as submitted by the authors

2.1 Mr. Akhimien was arrested on 28 October 1995, after having filed an application for asylum in Canada. He was held at the Canadian Immigration Detention Centre in Niagara Falls, Ontario, until 30 October 1995 when he was transferred to the Canadian Immigration Holding Centre Celebrity Inn in Mississauga, Ontario. Mr. Akhimien remained at the Celebrity Inn until his death, caused by pneumonia and/or untreated diabetes, on 17 December 1995.

2.2 According to counsel, on 6 December 1995, Mr. Akhimien had complained to other detainees at the Celebrity Inn that he was experiencing health problems, including blurred vision. On the same date, Mr. Akhimien made a written request to see the Celebrity Inn's medical doctor, listing his symptoms as blurred vision and headaches. The following day, on 7 December 1995, Mr. Akhimien consulted with the medical doctor who specifically ruled out diabetes as the cause of his failing health. No laboratory tests were performed.

2.3 On 13 December 1995 he made a new request to see the doctor and asked for a blood test. He added to his previously mentioned symptoms that he was experiencing dizziness, loss of appetite, lack of strength, a bitter taste in his mouth, lack of saliva and nausea.

2.4 On 13 December 1995, subsequent to his new request to see the medical doctor, Mr. Akhimien was put in solitary confinement. Counsel states that he was put in solitary confinement because he was perceived to be a troublemaker, constantly complaining about living conditions in the Celebrity Inn. He also states that Mr. Akhimien had argued with a guard who had refused him water from the kitchen and that his thirst was a symptom of diabetes. Counsel further states that the room where Mr. Akhimien was held in confinement was located only two doors away from the doctor's office and that the room was known to be very cold in wintertime. Mr. Akhimien remained in solitary confinement until his death.

2.5 On 14 December 1995, the doctor was at the Celebrity Inn, but did not examine Mr. Akhimien. On 15 December 1995, Mr. Akhimien consulted with a nurse who noted his complaints and advised him to consult with the doctor on 18 December 1995. According to counsel, the following day Mr. Akhimien requested medical assistance from the guards who ignored him, assuming that he was faking his condition. On 17 December 1995, the guards called the security supervisor of the Celebrity Inn as well as a nurse to the room in which Mr. Akhimien was held. Counsel states that he showed signs and symptoms associated with untreated diabetes. Mr. Akhimien's health condition was thereafter monitored every 30 minutes for several hours before an ambulance was eventually called. He was pronounced dead on arrival at the hospital. The autopsy identified the cause as either pneumonia or diabetic ketoacidosis, arising from untreated diabetes.

2.6 Pursuant to the Coroners Act of Ontario, a coroner's inquest was held between 7 May and 6 June 1996. The jury concluded that Mr. Akhimien's death was caused by diabetic ketoacidosis and that he had died from natural causes. On 5 June 1996 an application was filed by the Nigerian Canadian Association for judicial review of the coroner's inquest, on the grounds that the inquest had been conducted in a biased and discriminatory manner. Counsel further submits that the family made attempts to file a complaint before the Canadian Human Rights Commission, but that the complaint could not be examined since the deceased had not been lawfully residing in Canada. Counsel also submits that the available domestic remedies do not comply with the requirement of the Convention that a prompt and impartial investigation of any occurrence of torture must be undertaken. The delays inherent in a normal Canadian litigation process are not compatible with the State party's obligations under the Convention.

2.7 Counsel further draws the attention of the Committee to the fact that on at least two occasions, 30 November 1995 and 8 December 1995, Mr. Akhimien had written to the Canadian immigration authorities to withdraw his application for refugee status and requested to be released from detention.

Complaint

3.1 Counsel claims that the treatment to which Mr. Akhimien was subjected while in detention constitutes cruel, inhuman or degrading treatment and that the State party has acted in violation of article 16 of the Convention. It is argued that Mr. Akhimien's death was preventable, that the acts and omissions of the employees of the immigration detention centre were the cause of his death and that the Government of Canada has the final responsibility for the management of detention centres and therefore bears responsibility for the death of Mr. Akhimien.

3.2 It is further stated that the conditions and rules prevailing in Canadian immigration detention centres do not comply with the standards established by the Convention, in particular by articles 10 and 11.

3.3 Finally, counsel claims that the failure of the State party to ensure a prompt and impartial investigation of allegations of torture in connection with the death of Mr. Akhimien, as well as the failure to ensure that the family of the deceased received adequate compensation, constitute violations of articles 12, 13 and 14 of the Convention.

State party's observations

4.1 The State party recalls that pursuant to rule 107 of the rules of procedure of the Committee, the author of the communication must justify his acting on the victim's behalf. It maintains that it is unclear from the submission who the counsel represents or whether counsel has a mandate from Mr. Akhimien's family and dependants. The State party submits

that the Committee cannot examine this communication before counsel produces a document indicating the persons who mandated him to act on their behalf.

4.2 The State party submits that the communication be considered inadmissible given that the authors have not exhausted all effective, available domestic remedies as prescribed in article 22, paragraph 5 (b), of the Convention. The State party recalls that, in the present case, a coroner's inquest was conducted into the death of Mr. Akhimien, pursuant to the Coroner's Act of Ontario. It is further recalled that the authors of the communication allege that the coroner's inquest was not conducted impartially and objectively and that the rules of evidence were not respected during the process. The State party submits that if any error was committed during the inquest, as alleged by the authors of the communication, a domestic remedy exists, in the form of a judicial review by a Canadian court. The State party further submits that on 5 June 1996 the Nigerian Canadian Association filed an application for judicial review before the Ontario Divisional Court, seeking to quash certain rulings made by the coroner during the inquest or, alternatively, to quash the entire inquest proceedings. At the time of the State party's submission, the application for judicial review was still pending. The State party submits that domestic remedies have not been exhausted, either because the authors are the parties in the pending application for judicial review, or because the authors could have brought a similar application before a domestic court.

4.3 In response to the allegations of the authors that the available domestic remedies do not comply with the requirement of the Convention that a prompt and impartial investigation of any occurrence of torture be undertaken, the State party draws the attention of the Committee to the fact that the coroner's inquiry into the death of Mr. Akhimien was held within five months after the death and that the allegation is therefore unfounded. The State party further submits that the authors' arguments must be disregarded since the authors do not substantiate or explain in what manner the existing domestic remedies are unreasonably prolonged or in what way the authors would be prejudiced.

4.4 The State party also submits that its Criminal Code as amended prohibits acts of torture committed by officials, such as peace officers, public officers or persons acting at the instigation of, or with the consent or acquiescence of such persons. Furthermore, the Criminal Code prohibits such acts as assault, both with or without bodily harm, causing bodily harm with intent to wound or to endanger life, and intimidation. The authors of the communication could thus have asked that criminal charges be brought against the individuals who allegedly inflicted an act of torture on Mr. Akhimien, but no such action has been taken.

4.5 As to the question of compensation, the State party further states that the Crown Liability and Proceedings Act and the common law permit persons to sue public officers and/or the Government. The Government is responsible for any liability, compensation or damages assessed on account of the improper and unreasonable acts of its employees. The State party underlines that redress is available in the civil courts in respect of acts amounting to the tort of negligence, assault or battery. Such redress is available notwithstanding that the same acts may constitute a criminal offence and whether the accused was convicted or acquitted at trial.

4.6 The State party recalls that, on 24 September 1996, the authors initiated an action before the Ontario Divisional Court to sue the Government, pursuant to the common law tort of negligence, for wrongful death and for violations of the Canadian Charter of Rights and Freedoms, section 12 of which states that everyone has the right not to be subjected to any cruel and unusual treatment or punishment. The case is still pending and the State party maintains that the authors have not exhausted domestic remedies in this respect.

4.7 According to the State party, article 14 of the Convention does not require a particular or specific legal qualification that an act constitutes an "act of torture" but requires that the legal system allows for compensation to be paid to the dependants of the victim. If the Government's liability with respect to the death of Mr. Akhimien is established, a fair and equitable compensation may be awarded to his dependants. The State party submits that, consequently, provision has been made in its domestic law for victims of torture to seek redress and fair and adequate compensation. It is the submission of the State party that the redress provided for in national law satisfies the requirements of article 14 of the Convention.

4.8 Compensation can also be sought from the Criminal Injuries Compensation Board, on the condition that criminal charges have been brought under the Criminal Code and that this has resulted in the conviction of certain individuals for having committed an act of torture. Compensation which may be awarded includes expenses incurred as a result of the injury or death, pecuniary loss, and compensation for pain and suffering. An application to the Board does not prevent a person from recovering damages by way of civil proceedings. The State party reiterates that the authors have not brought any criminal charges under the Criminal Code and that a redress before the Board is at present therefore not possible.

4.9 Finally, the State party submits that the communication should be considered inadmissible as the authors have not substantiated their allegations against the Government. In particular, the State party states that the authors have failed to establish that the alleged acts could be characterized as "torture" as defined in article 1 of the Convention or as "cruel, inhuman or degrading treatment or punishment" as defined in article 16. The essence of the communication is that the medical care at the immigration detention centre was inadequate. The communication alleges that Mr. Akhimien did not receive or was denied adequate medical care in that the medical staff did not diagnose that he had a diabetic condition of which he was not aware. The State party submits that the negligence alleged does not constitute torture or cruel, inhuman or degrading treatment or punishment. Even though, in some cases, omissions could be considered torture or inhuman treatment, what is alleged is negligence in the provision of medical care to a person already suffering from a disease unknown to him. The State party submits that this cannot be considered an "act" of torture or cruel, inhuman or degrading treatment or punishment within the meaning of the Convention and that the Convention was not intended to nor does it apply to such circumstances.

Counsel's comments

5.1 In his reply to the State party's submission, counsel states that the purpose of the exhaustion of domestic remedies rule is not to ensure that domestic remedies are not superseded by an international authority, but rather to give the national authority the opportunity to remedy the wrong suffered by the victim. Further, the remedies must not only be theoretically available, but there must also be a realistic chance that the redress would be effective.

5.2 Counsel submits that subsection 31 (2) of the Coroners Act explicitly forbids the inquest jury from making "any finding of legal responsibility" or from expressing "any conclusion of law" regarding the circumstances that are the subject of the inquest. Consequently, it is erroneous to say that the coroner's inquest held into the circumstances of the death of the victim in the present case obviates the necessity of an independent review. Further, counsel submits that the authors were not parties to the application for judicial review made by the Nigerian Canadian Association to the Ontario Divisional Court. It should

be noted that the family and dependants of the deceased lacked the necessary resources to pursue and bring to timely conclusion an application for judicial review. If the authors would at present file for a judicial review it would be dismissed for delay.

5.3 Counsel states that theoretically and practically, criminal prosecutions are strictly matters between the State and the accused. The complainant is not a party to such actions nor can the victim exercise any control over the prosecution process. The possibility of filing a complaint with the consequence that the culprits might be prosecuted and/or convicted cannot be considered a remedy.

5.4 With regard to domestic remedies for compensation, counsel confirms that the authors have filed an application under the Crown Liability and Proceedings Act and that the case is pending at present. However, counsel adds that although the action is currently pending before a Canadian court, the action has been stalled and the case has not progressed since November 1996 due to circumstances not attributable to the authors.

5.5 Counsel further submits that the State party's reference to the Criminal Injuries Compensation Board as a domestic remedy is purely speculative, since an application cannot be filed until after prosecution, trial and conviction of the culprit.

5.6 Counsel explains that he submits the communication on behalf of the family and the dependants of the deceased, in his capacity as their counsel. It is incumbent upon counsel, in that capacity, to pursue all possible institutional remedies, national and international, for the purpose of redressing the wrongs, injuries and damage suffered by his clients. Counsel refers to enclosed affidavits authorizing counsel to represent the victim's family and dependants in national proceedings.

Issues and proceedings before the Committee

6.1 Before considering any claim in a communication, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention.

6.2 The Committee notes that the State party challenges the admissibility of the communication on the grounds that counsel has not justified acting on the victim's behalf; that domestic remedies have not been exhausted; and that the communication is not sufficiently substantiated to serve as a basis for the Committee's examination. The Committee, however, considers that the documentation before it shows that counsel is acting on behalf of the family and dependants of Mr. Akhimien. It also considers that the information before it is sufficient to establish a prima facie case that the communication may raise an issue under the Convention.

6.3 Pursuant to article 22, paragraph 5 (b), of the Convention, the Committee is precluded from considering any communication unless it has been ascertained that all available domestic remedies have been exhausted; this rule does not, however, apply if it is established that the application of domestic remedies has been or would be unreasonably prolonged or would be unlikely to bring effective relief to the presumed victim. In the case under consideration, the Committee notes the information from counsel that due to the time elapsed, it is no longer possible for the authors to file for judicial review of the coroner's inquest. However, the Committee also notes that the authors have not filed criminal charges under the Criminal Code and that an application for compensation is currently pending before the Ontario Divisional Court. The Committee has considered whether the compensation procedure has been unduly prolonged or unlikely to bring effective relief and concluded, in view of the information provided by the authors, that this is not the case for the time being. Thus, the Committee finds that the requirements under article 22, paragraph 5 (b), of the Convention have not been met.

7. The Committee therefore decides:

(a) That the communication as it stands is inadmissible;

(b) That this decision may be reviewed under rule 109 of the Committee's rules of procedure upon receipt of a request by or on behalf of the authors containing information to the effect that the reasons for inadmissibility no longer apply;

(c) That this decision shall be communicated to the State party, the author and his representative.

[Done in English, French, Russian and Spanish, the English text being the original version.]

Annex VIII

List of documents for general distribution issued for the Committee during the reporting period

A. Twenty-first session

Symbol	*Title*
CAT/C/3/Rev.3	Revised rules of procedure
CAT/C/14/Rev.1	Revised guidelines for the submission of periodic reports by States parties
CAT/C/16/Add.7	Initial report of Yugoslavia
CAT/C/20/Add.7	Second periodic report of Tunisia
CAT/C/33/Add.4	Second periodic report of Croatia
CAT/C/34/Add.10	Third periodic report of Hungary
CAT/C/37/Add.2	Initial report of Iceland
CAT/C/44/Add.1	Third periodic report of the United Kingdom of Great Britain and Northern Ireland
CAT/C/46	Provisional agenda and annotations
CAT/C/SR.345-363	Summary records of the twenty-first session of the Committee

B. Twenty-second session

Symbol	*Title*
CAT/C/16/Add.8	Initial report of Venezuela
CAT/C/17/Add.19	Second periodic report of Bulgaria
CAT/C/17/Add.20	Second periodic report of Luxembourg
CAT/C/28/Add.4	Initial report of the former Yugoslav Republic of Macedonia
CAT/C/29/Add.5	Second periodic report of Liechtenstein
CAT/C/34/Add.11	Third periodic report of Egypt
CAT/C/43/Add.1	Second periodic report of Mauritius
CAT/C/43/Add.2	Second periodic report of Morocco
CAT/C/44/Add.2	Third periodic report of Italy
CAT/C/44/Add.3	Third periodic report of the Libyan Arab Jamahiriya
CAT/C/47	Note by the Secretary-General listing initial reports due in 1999
CAT/C/48	Note by the Secretary-General listing second periodic reports due in 1999
CAT/C/49	Note by the Secretary-General listing third periodic reports due in 1999
CAT/C/50	Provisional agenda and annotations
CAT/C/SR.363-390	Summary records of the twenty-second session of the Committee